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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

TARA DUGGAN, LORI MYERS,  
ANGELA COSGROVE, ROBERT  
MCQUADE, COLLEEN  
MCQUADE, ANTHONY  
LUCIANO, LORI LUCIANO,  
ROBERT NUGENT, JAMES  
BORRUSO, FIDEL JAMELO,  
JOCELYN JAMELO, KEN  
PETROVCIK, AVRAHAM ISAC  
ZELIG, AMAR MODY, HEENA  
MODY, and MEGAN KIIHNE, On  
Behalf of Themselves and All Others  
Similarly Situated,

Plaintiffs,

v.

TRI-UNION SEAFOODS LLC, dba  
Chicken of the Sea International, Inc.,

Case No.: 19-cv-02562-TSH-JST

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

1. VIOLATION OF THE RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT. 18 U.S.C. §§1962(c)-(d);
2. VIOLATION OF THE UNFAIR COMPETITION LAW, Business and Professions Code §§17200 *et seq.*;
3. VIOLATION OF THE CONSUMERS LEGAL REMEDIES ACT, Civil Code §§1750 *et seq.*;
4. VIOLATION OF FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT – Fla. Stat. §§501.201, *et seq.*;
5. VIOLATION OF THE NEW YORK

1 a California Company,  
2 Defendant.

6. GENERAL BUSINESS LAW § 349;  
VIOLATION OF THE NEW  
JERSEY CONSUMER FRAUD  
ACT, §56:8-2.10;
7. VIOLATION OF THE MINNESOTA  
PREVENTION OF CONSUMER  
FRAUD ACT (UNFAIR  
PRACTICES) – Minn. Stat.  
§§325F.68, *et seq.* and Minn. Stat.  
§§8.31, *et seq.*;
8. VIOLATION OF THE MINNESOTA  
PREVENTION OF CONSUMER  
FRAUD ACT (FALSE  
STATEMENT IN ADVERTISING) –  
Minn. Stat. §§325F.67, *et seq.*;
9. VIOLATION OF THE MINNESOTA  
UNIFORM DECEPTIVE TRADE  
PRACTICES ACT – Minn. Stat.  
§§325D.43, *et seq.*; and
10. UNJUST ENRICHMENT

DEMAND FOR JURY TRIAL

1 Plaintiffs Tara Duggan, Lori Myers, Angela Cosgrove, Robert McQuade,  
2 Colleen McQuade, Anthony Luciano, Lori Luciano, Robert Nugent, James Borruso,  
3 Fidel Jamelo, Jocelyn Jamelo, Ken Petrovcik, Avraham Isac Zelig, Amar Mody,  
4 Heena Mody, and Megan Kiihne bring this action on behalf of themselves and all  
5 others similarly situated against Defendant Tri-Union Seafoods LLC, dba Chicken  
6 of the Sea International, Inc. (“Chicken of the Sea” or “Defendant”), and for their  
7 First Amended Class Action Complaint, state:

### 8 **FACTUAL ALLEGATIONS**

9 1. Chicken of the Sea tuna has been marketed, sold, and distributed  
10 throughout the United States since 1930. Today, Tri-Union Seafoods is the largest  
11 canned tuna company and one of the largest seafood companies in the world with  
12 major brands in the United States and close to 20 other countries.

13 2. Since 1990, Chicken of the Sea has engaged in a pervasive advertising  
14 campaign that expressly promises consumers that its tuna is “Dolphin Safe”. Chicken  
15 of the Sea’s canned tuna products prominently display a dolphin-safe logo on the  
16 front of their wrap around label immediately to the right of the Chicken of the Sea  
17 product name. The logo also is featured prominently on Defendant’s tuna pouches  
18 and cups.<sup>1</sup> Since the introduction of the dolphin-safe policy in 1990, including the  
19 last 4 years (the “Class Period”), however, Chicken of the Sea’s tuna has not been  
20 “Dolphin-Safe”.

21 3. Plaintiffs herein allege unjust enrichment and violations of: (1) the  
22 Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §1962;  
23 (2) California's Unfair Competition Law, Cal. Bus. & Prof. Code §17200, *et seq.*; (3)  
24 California’s Consumers Legal Remedies Act, Cal. Civ. Code §1750, *et seq.*; (4) the  
25 Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §501.201, *et seq.*; (5) the  
26

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27 <sup>1</sup> Defendant sells two tuna products in pouches (light and albacore) and three tuna  
28 products in cups (infusions, tuna to-go, and lunch solutions tuna salad).

1 New York General Business Law §349; (6) the New Jersey Consumer Fraud Act,  
2 §56:8-2.10; (7) the Minnesota Prevention of Consumer Fraud Act, Minn. Stat.  
3 §§325F.67-325F.68; and (8) the Minnesota Uniform Deceptive Trade Practices Act,  
4 Minn. Stat. §325D.43, *et seq.*

5 4. Plaintiffs seek, on behalf of themselves and all Class members,  
6 nationwide monetary damages, restitution, injunctive relief, and all relief deemed  
7 appropriate, arising out of Defendant's illegal scheme and conspiracy alleged herein.

#### 8 **Origin of "Dolphin-Safe" Tuna**

9 5. Prior to the development of modern purse seine fishing techniques,  
10 tropical tuna were caught one at a time using traditional pole-and-line methods.  
11 NOAA, The Tuna-Dolphin Issue, NOAA Fisheries Southwest Fisheries Science  
12 Center (Sept. 2, 2016), *available at* [https://swfsc.noaa.gov/textblock.](https://swfsc.noaa.gov/textblock.aspx?Division=PRD&ParentMenuId=228&id=1408)  
13 [https://swfsc.noaa.gov/textblock.](https://swfsc.noaa.gov/textblock.aspx?Division=PRD&ParentMenuId=228&id=1408)  
14 [aspx?Division=PRD&ParentMenuId=228&id=1408](https://swfsc.noaa.gov/textblock.aspx?Division=PRD&ParentMenuId=228&id=1408) (last visited May 3, 2019).

15 6. But by the 1950s, the development of synthetic netting (that would not  
16 rot in tropical waters) and hydraulically driven power-blocks (needed to haul very  
17 large nets) made it possible to deploy massive purse-seines (vertical net curtains  
18 closed by pulling on a chain located along the bottom to enclose the fish, much like  
19 tightening the cords of a drawstring purse) around entire schools of tuna.

20 7. Recognizing that tuna schools (swimming deeper in the water) often  
21 congregate with dolphin schools (swimming at observable depths), fishermen began  
22 routinely encircling tuna *and* dolphin schools with purse seine nets and hauling the  
23 entire catch aboard.

24 8. This practice led to millions of dolphins being killed as unintended  
25 bycatch.

26 9. In the late 1980s, the world learned of the large numbers of dolphins  
27 indiscriminately killed by tuna fishermen. In 1988, a worldwide telecast showed  
28 video images of dolphins being killed in tuna fishing nets. That video was captured

1 by an undercover environmental activist posing as a ship's cook. Public outcry was  
2 immediate and intense.

3 10. Heightened public awareness of these mass dolphin deaths led to the  
4 development and enhancement of fishing regulations around the world, including a  
5 strengthening of the Marine Mammal Protection Act ("MMPA") and the enactment  
6 of the Dolphin Protection Consumer Information Act ("DPCIA") of 1990.

7 11. Recognizing these indiscriminate fishing methods were also deflating  
8 consumers' enthusiasm for tuna products, the major sellers of shelf-stable tuna fish  
9 products – including Chicken of the Sea, StarKist, and Bumble Bee – started  
10 promising consumers that the tuna they sold would only be procured through  
11 dolphin-safe fishing practices.

12 12. In the ensuing 25 years, U.S. tuna sellers, including Chicken of the Sea,  
13 implemented a widespread and long-term marketing campaign that continues to this  
14 day – representing to consumers that no dolphins were killed or harmed in capturing  
15 their tuna, as well as expressing their commitment to sustainably sourcing tuna.

16 13. For at least the last 4 years, reasonable consumers expected that all  
17 canned tuna and pre-packaged tuna in pouches and cups (collectively, "tuna  
18 products"), are dolphin-safe because they have been indoctrinated to believe  
19 precisely that by Defendant's and the other tuna companies' highly effective dolphin  
20 safety and sustainably fishing practices marketing campaigns. In fact, 98% of the  
21 prepacked tuna sold today in the United States is labeled with some "dolphin-safe"  
22 representation. Forbes, K. William Watson, 'Dolphin Safe' Labels on Canned Tuna  
23 Are A Fraud (Apr. 29, 2015), *available at* [https://www.forbes.com/](https://www.forbes.com/sites/realspin/2015/04/29/dolphin-safe-labels-on-canned-tuna-are-a-fraud/#51db16b8295e)  
24 [sites/realspin/2015/04/29/dolphin-safe-labels-on-canned-tuna-are-a-fraud/#51db1](https://www.forbes.com/sites/realspin/2015/04/29/dolphin-safe-labels-on-canned-tuna-are-a-fraud/#51db16b8295e)  
25 [6b8295e](https://www.forbes.com/sites/realspin/2015/04/29/dolphin-safe-labels-on-canned-tuna-are-a-fraud/#51db16b8295e) (last visited May 3, 2019).

14. Chicken of the Sea tuna, however, is not dolphin-safe. Nor is it sustainably sourced. Defendant's dolphin-safe representations are false, misleading, and/or deceptive.

### **Chicken of the Sea's Dolphin-Safe Representations**

15. In 1990, Chicken of the Sea was one of the first major tuna companies to adopt a "dolphin-safe" policy. According to Chicken of the Sea, "[w]e implemented 'The Mermaid Cares' dolphin-safe policy in April 1990 and this program places us among the industry leaders in preventing accidental dolphin mortality. All tuna purchased, processed and sold by Chicken of the Sea is dolphin-safe. There is no flexibility in our policy. All suppliers of our tuna and all suppliers of finished goods must be 100 percent dolphin-safe. None of the tuna we purchase is caught in association with dolphins." Chicken of the Sea, 2015 Sustainability Report, at 35, *available at* <http://sustainability.chickenofthesea.com/>. In sum, "[a]ll tuna purchased, processed and sold by Chicken of the Sea is dolphin-safe ... period." *Id.* at 49.

16. On every can and pre-packaged tuna pouch and cup, Defendant states that the tuna products are "Dolphin Safe" with a prominent dolphin logo and encourages consumers of its canned tuna "to trace your fish" by visiting the Chicken of the Sea website. Defendant's website, which is identified on all its tuna products, also sets forth Defendant's dolphin-safe policy.

17. Chicken of the Sea's website explains what Defendant means by "dolphin-safe," and the meaning attributed to "dolphin-safe" by Defendant reflects its importance to consumers. Defendant promises in pertinent part:

- Chicken of the sea remains "fully committed" to the "100% dolphin-safe policy" implemented in April 1990. Chicken of the Sea, Frequently

1           Asked Questions, available at [https://chicken](https://chickenofthesea.com/company/faqs)  
 2           ofthesea.com/company/faqs (last visited May 6, 2019).

- 3           • Chicken of the Sea is “committed to protecting dolphins.” Chicken of  
 4           the Sea, A Sea of Good, Company, available at  
 5           <https://chickenofthesea.com/company> (last visited May 6, 2019).
- 6           • Chicken of the Sea will not purchase any tuna from vessels that net fish  
 7           associated with dolphins. Chicken of the Sea, Frequently Asked  
 8           Questions, available at <https://chickenofthesea.com/company/faqs> (last  
 9           visited May 6, 2019).
- 10          • All fishing techniques are compliant with our Dolphin-Safe Policy.  
 11          Chicken of the Sea, Know Your Seafood, available at  
 12          <https://chickenofthesea.com/company/know-your-seafood> (last visited  
 13          May 6, 2019).
- 14          • Chicken of the Sea will require certification of dolphin-safe fishing  
 15          practices from all tuna suppliers. Chicken of the Sea, Frequently Asked  
 16          Questions, available at [https://chickenofthesea.](https://chickenofthesea.com/company/faqs)  
 17          com/company/faqs (last visited May 6, 2019).

18          18. As noted by the Ninth Circuit in a recent decision, “[g]iven the choice  
 19          of whether to purchase dolphin-safe tuna or to purchase tuna not labeled dolphin-  
 20          safe, American consumers overwhelmingly chose to purchase tuna that was labeled  
 21          dolphin-safe. As a result, foreign tuna sellers who did not adjust their fishing methods  
 22          were quickly forced out of the market.” *Earth Island Institute v. Hogarth*, 494 F.3d  
 23          757, 761 (9th Cir. 2007) (rejecting Government efforts to lessen restrictions on tuna  
 24          fisheries in the Eastern Tropical Pacific and upholding previous finding that best  
 25          evidence available indicates that tuna fishing was having significant adverse impact  
 26          on dolphin stocks).



1        19. The importance to consumers of dolphin safety has not lessened in the  
2        ensuing 12 years since the Court’s finding, as evidenced by Defendant’s continued  
3        labeling of its tuna products with a dolphin-safe logo.

4        20. In each of the last 4 years of the Class Period, Chicken of the Sea has  
5        acknowledged that dolphin safe and sustainable sourcing are “very important” to  
6        consumers. In 2015, Chicken of the Sea conducted a materiality assessment to  
7        identify the most important issues to its stakeholders, including consumers and  
8        retailers. After reviewing score cards and questionnaires from retailers and  
9        communicating with consumers and retailers on social media (Facebook and Twitter  
10       feed) and its 24/7 hotline, Chicken of the Sea determined fish stocks and ocean health  
11       and supply chain sustainability issues were the second and third most material  
12       (meaning “very important”) factors in consumers’ and retailers’ decisions. Chicken  
13       of the Sea, 2015 Sustainability Report, at 13, 15, *available at*  
14       <http://sustainability.chickenofthesea.com/>. In 2016, Chicken of the Sea’s parent  
15       company reported that key issues for both consumers and retailers were “dolphin-  
16       safe eco-labelling” and “environmental responsibilities”. Thai Union Group,  
17       Sustainability Report 2016, at 40, *available at*  
18       [https://seachangesustainability.org/wp-](https://seachangesustainability.org/wp-content/uploads/ENG_Thai%20Union_SD%20report_2016.pdf)  
19       [content/uploads/ENG\\_Thai%20Union\\_SD%20report\\_2016.pdf](https://seachangesustainability.org/wp-content/uploads/ENG_Thai%20Union_SD%20report_2016.pdf). In 2017, it reported  
20       these same key issues and noted “consumers around the globe want to know where  
21       the food on their plates comes from and that it meets the highest quality and  
22       sustainability standards.” Thai Union Group, 2017 Sustainability Report, at 68,  
23       *available at* [https://seachangesustainability.org/wp-content/uploads/Thai-Union-](https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-Sustainability-Report-Online-Format-1.pdf)  
24       [2017-Sustainability-Report-Online-Format-1.pdf](https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-Sustainability-Report-Online-Format-1.pdf). And in 2018 it reported that  
25       consumers are “increasingly conscious of where and how their food is sourced”. Thai  
26       Union Group, 2018 Sustainability Report, at 6, *available at*  
27



1 [http://www.thaiunion.com/files/download/sustainability/20190502-tu-](http://www.thaiunion.com/files/download/sustainability/20190502-tu-sustainability-report-2018-en.pdf)  
 2 [sustainability-report-2018-en.pdf](http://www.thaiunion.com/files/download/sustainability/20190502-tu-sustainability-report-2018-en.pdf).

3         21. That dolphin safety and the sustainable sourcing of seafood has grown  
 4 in importance to consumers is also evidenced by many retailers' refusal to sell tuna  
 5 that is not caught using dolphin-safe pole-and-line, trolling<sup>2</sup>, or handline catch  
 6 methods. *See, e.g.,* Whole Foods Market, Sustainable Canned Tuna, *available at*  
 7 <https://www.wholefoodsmarket.com/sustainable-canned-tuna> (last visited Apr. 17,  
 8 2019) ("Our sourcing policy requires all fisheries supplying canned tuna to use pole-  
 9 and-line, troll or handline catch methods" unlike "[m]uch of conventional canned  
 10 tuna [which] is caught by vessels using purse seine nets with Fish Aggregating  
 11 Devices (known as FADs), that attract tuna but also result in high bycatch of ... other  
 12 marine life."); Whole Foods Market, Canned Tuna Sourcing Policy (Aug. 15, 2018),  
 13 *available at* [http://assets.wholefoodsmarket.](http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Market_Canned_Tuna_Sourcing_Policy_102017.pdf)  
 14 [com/www/departments/seafood/Whole\\_Foods\\_Market\\_Canned\\_Tuna\\_Sourcing\\_P](http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Market_Canned_Tuna_Sourcing_Policy_102017.pdf)  
 15 [olicy\\_102017.pdf](http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Market_Canned_Tuna_Sourcing_Policy_102017.pdf) (last visited Apr. 17, 2019) ("Requirements for Source Fisheries"  
 16 include "1. All canned tuna must be sourced from pole and line, troll, and handline  
 17 fisheries. Tuna from longline or purse seine fisheries is prohibited."); PR Newswire,  
 18 Safeway Announces New Sustainable Sourcing Practice for Tuna (Feb. 10, 2012),  
 19 *available at* [https://www.prnewswire.com/news-releases/safeway-announces-new-](https://www.prnewswire.com/news-releases/safeway-announces-new-sustainable-sourcing-practice-for-tuna-139096714.html)  
 20 [sustainable-sourcing-practice-for-tuna-139096714.html](https://www.prnewswire.com/news-releases/safeway-announces-new-sustainable-sourcing-practice-for-tuna-139096714.html) (last visited Apr. 17, 2019);  
 21 Albertsons/Safeway, Supplier Sustainability Guidelines and Expectations (Aug.  
 22 2015), *at* 21, *available at* [https://suppliers.safeway.com/usa/](https://suppliers.safeway.com/usa/pdf/supplier_sustainability_expectations.pdf)  
 23 [pdf/supplier\\_sustainability\\_expectations.pdf](https://suppliers.safeway.com/usa/pdf/supplier_sustainability_expectations.pdf) (last visited Apr. 29, 2019) ("Suppliers  
 24 are encouraged to "Not use Purse-seine nets deployed on Fish Aggregation Devices  
 25

26 <sup>2</sup> Method of fishing whereby one or more fishing lines with baits are drawn through  
 27 the water. Monterey Bay Aquarium Seafood Watch, Fishing & Farming Methods,  
 28 *available at* [https://www.seafoodwatch.org/ocean-issues/fishing-and-farming-](https://www.seafoodwatch.org/ocean-issues/fishing-and-farming-methods)  
[methods](https://www.seafoodwatch.org/ocean-issues/fishing-and-farming-methods) (last visited May 3, 2019).

(FADs) and employ alternatives such as pole and line trolling in an effort to reduce or eliminate by-catch”); H-E-B, H-E-B seafood policy, *available at* <https://www.heb.com/static-page/article-template/H-E-B-Seafood-Policy> (last visited Apr. 17, 2019) (for wild-caught seafood, H-E-B preferentially sources from fisheries that reduce bycatch, and H-E-B “will never knowingly buy or sell any illegal, unreported, or unregulated (IUU) fish”); Giant Eagle, Tuna Policy, *available at* <https://www.gianteagle.com/about-us/sustainable-seafood/tuna-policy> (last visited Apr. 29, 2019) (encourages suppliers to “eliminate harvest with the use of non-entangling FADs”); Wegmans, Seafood Sustainability, *available at* <https://www.wegmans.com/about-us/making-a-difference/sustainability-at-wegmans/seafood-sustainability.html> (last visited Apr. 29, 2019) (“Our wild-caught seafood suppliers must meet Wegmans’ high standards to source seafood that is caught responsibly” including having “[g]ear chosen to reduce bycatch.”).

22. Almost all retailers have implemented sustainable seafood sourcing policies and goals in response to customer feedback. Kroger, for example, which operates 2,782 retail supermarkets in 35 states and the District of Columbia and serves over 9 million customers a day, has adopted a comprehensive sustainable sourcing program in response to customer feedback received at “in-store service counters, online surveys, telephone surveys, focus groups, websites and social media” as well as its live call “Kroger Customer Connect” center. The Kroger Family of Companies 2018 Sustainability Report (“Kroger Sustainability Report”), *available at* [http://sustainability.kroger.com/Kroger\\_CSR2018.pdf](http://sustainability.kroger.com/Kroger_CSR2018.pdf) (last visited Apr. 17, 2019), at 12.

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23. The special “Dolphin Safe” logo Defendant includes on each Chicken of the Sea tuna product as shown below is intended by Defendant to convey the message “100% dolphin-safe”<sup>3</sup>:



24. However, unbeknownst to consumers, substantial numbers of dolphins and other marine life are killed and harmed by the fishermen and fishing methods used to catch Defendant’s tuna. Thus, Defendant’s dolphin-safe label representations are false, misleading, and/or deceptive.

### **Dolphin Safety Legislation**

25. Since the 1980s, Congress has passed a series of laws to protect dolphins and other marine life from indiscriminate fishing methods. Beginning with the MMPA, which Congress repeatedly strengthened in 1984, 1988, and 1992, Congress “ban[ned] importation of tuna that failed to meet certain conditions regarding dolphin mortality.” *Earth Island Institute v. Evans*, No. C 03-0007-THE, ECF No. 293 at 3 (N.D. Cal.).

26. Then, in 1990, Congress passed the DPCIA, which created the dolphin-safe mark. 16 U.S.C. §1385. The Act provided that tuna could only be labeled with

<sup>3</sup> Chicken of the Sea, Frequently Asked Questions, available at <https://chickenofthesea.com/company/faqs> (last visited May 6, 2019). Chicken of the Sea, Sustainability Report 2012 at 4, available at [https://chickenofthesea.com/uploads/pdf/COSI\\_2014\\_Sustainability\\_Report.pdf](https://chickenofthesea.com/uploads/pdf/COSI_2014_Sustainability_Report.pdf) (last visited May 22, 2019) (“There is no flexibility in our policy. All the suppliers of our tuna and all suppliers of finished goods must be 100 percent dolphin-safe. None of the tuna we purchase is caught in association with dolphins.”).

the official “dolphin-safe” mark codified at 50 CFR §216.95 if, *inter alia*, the tuna was not caught in the Eastern Tropical Pacific (“ETP”) using nets intentionally deployed on or to encircle dolphins, was certified as dolphin-safe by an independent observer on the tuna boat, and can be traced from the fishery, to the cannery, to the shelf. *Id.*

27. The DPCIA imposes heightened dolphin safety requirements which are not limited to ETP fisheries on manufacturers, like Defendant, who label their products with an alternative dolphin-safe logo. 16 U.S.C. §1385(d)(3).

28. The DPCIA-established official dolphin-safe mark is codified at 50 CFR §216.95. That official mark contains the words “U.S. Department of Commerce”, along with the words “Dolphin Safe” in red next to a blue-colored dolphin profile facing the upper left, and a tricolor (light blue, blue, and dark blue) banner along the bottom of the mark that overlaps with the dolphin’s fluke:



29. Defendant elected not to utilize the DPCIA official dolphin-safe logo. By placing an alternative “Dolphin Safe” logo on Chicken of the Sea tuna products, rather than the official mark, Defendant voluntarily assumed the heightened dolphin safety requirements under the DPCIA applicable to all locations where Defendant captures its tuna and to all fishing methods used, whether nets or other gear. Pursuant

1 to the regulations, Defendant must ensure that (1) “no dolphins were killed or  
2 seriously injured in the sets or other gear deployments in which the tuna were  
3 caught”; and (2) the label must be “supported by a tracking and verification program”  
4 throughout the fishing, transshipment and canning process; “periodic audits and spot  
5 checks” must be conducted, and Chicken of the Sea must provide “timely access to  
6 data required.” 16 U.S.C. §§1385(d)(3)(C) and (f).

7 30. To be clear, the Act and implementing regulations specify that “no”  
8 dolphins must be “killed or seriously injured” and if “a” dolphin “was killed or  
9 seriously injured [defined as ‘any injury that will likely result in mortality’ (50 CFR  
10 §216.3)]”, the tuna is *not dolphin-safe* and must be *stored physically separate* from  
11 tuna that is dolphin-safe and *must be supported by sufficient documentation* to enable  
12 the National Marine Fisheries Service to trace the non-dolphin-safe tuna back to the  
13 fishing trip. 50 CFR §216.91.

14 31. Plaintiffs allege that Defendant falsely represents that Chicken of the  
15 Sea tuna products are “Dolphin Safe” – meaning “no” dolphins were killed or  
16 seriously injured – when Defendant’s tuna fishing practices kill or harm substantial  
17 numbers of dolphins each year. And because Defendant does not adequately trace or  
18 otherwise identify the tuna that is not dolphin-safe and physically segregate and store  
19 it separately from any tuna that may be dolphin-safe, Defendant may not label any of  
20 its products as dolphin-safe.

21 **World Trade Organization Dispute Regarding “Dolphin-Safe” Labels**

22 32. In 2008, a trade dispute erupted between Mexico and the United States  
23 over the use of a dolphin-safe representation on labels of prepacked tuna products  
24 sold in the United States pursuant to the DPCIA and the Ninth Circuit’s holding in  
25 *Earth Island Institute v. Hogarth, supra*.

26 33. Mexico, which fishes for tuna primarily in the ETP using purse seine  
27 nets, alleged that the DPCIA discriminated against Mexican tuna because it imposed

1 stricter regulations and required more exacting documentary evidence of compliance  
2 with the Act for tuna caught in the ETP than in other fisheries.

3 34. On September 15, 2011, the WTO Panel hearing the dispute issued its  
4 first Report. The Panel disagreed that the DPCIA discriminates against Mexico, but  
5 also found the Act was more trade-restrictive than necessary to fulfill its legitimate  
6 objectives of ensuring (i) consumers are not deceived by dolphin-safe  
7 representations, and (ii) United States markets are not used to encourage tuna fishing  
8 practices that harm dolphins. Both Mexico and the United States appealed.

9 35. On May 16, 2012, the WTO Appellate Body issued its Report. Among  
10 other findings, the Appellate Body found the DPCIA and the ruling in *Hogarth*  
11 together:

12 set out a single and legally mandated definition of a “dolphin-  
13 safe” tuna product and disallows the use of other labels on tuna  
14 products that use the terms “dolphin-safe”, [or make other  
15 promises about] dolphins, porpoises and marine mammals [that]  
16 do not satisfy this definition. In doing so, the US measure  
prescribes in a broad and exhaustive manner the conditions that  
apply for making any assertion on a tuna product as to its  
“dolphin-safety”, regardless of the manner in which that  
statement is made.

17 See Official Summary, WTO DS381, current through Jan. 31, 2019, *available at*  
18 [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds381\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds381_e.htm) (last visited  
19 May 10, 2019).

20 36. However, the Appellate Body also found the DPCIA discriminated  
21 against Mexico. In doing so, the Appellate Body:

22 examined whether the different conditions for access to a “dolphin-safe”  
23 label are “calibrated” to the risks to dolphins arising from different  
24 fishing methods in different areas of the ocean, as the United States had  
25 claimed. The Appellate Body noted the Panel’s finding that the fishing  
26 technique of setting on dolphins is particularly harmful to dolphins and  
27 that this fishing method has the capacity of resulting in observed and  
28 unobserved adverse effects on dolphins. **At the same time, the Panel  
was not persuaded that the risks to dolphins from other fishing  
techniques are insignificant and do not under some circumstances  
rise to the same level as the risks from setting on dolphins.** The  
Appellate Body further noted the Panel’s finding that, while the US



measure fully addresses the adverse effects on dolphins resulting (including observed and unobserved effects) from setting on dolphins in the ETP, it does not address mortality arising from fishing methods other than setting on dolphins in other areas of the ocean. In these circumstances, the Appellate Body found that the measure at issue is not even-handed in the manner in which it addresses the risks to dolphins arising from different fishing techniques in different areas of the ocean.

*Id.* (emphasis added).

37. In other words, the WTO Appellate Body found that fishing methods being employed in and out of the ETP were likely harming dolphin populations and the U.S. regulatory regime designed to protect dolphins was perhaps not strong enough in its regulation of fisheries outside the ETP.

38. Following this Report, on May 31, 2012 Defendant, along with StarKist and Bumble Bee, issued the following press release through the National Fisheries Institute (“NFI”):

#### STATEMENT ON WTO DOLPHIN SAFE TUNA RULING

NFI is the leading seafood trade association in the United States and represents Bumble Bee, Chicken of the Sea and StarKist.

Household tuna brands Bumble Bee, Chicken of the Sea and StarKist are disappointed in the World Trade Organization's (WTO) appeals court ruling because it is likely to create consumer confusion about whether or not their products continue to be dolphin safe. **The three U.S. brands want to reassure consumers they have no reason to be concerned that their companies are wavering in their commitment to providing dolphin safe tuna as a result of this ruling. These companies do not and will not utilize tuna caught in a manner that harms dolphins. Providing consumers with sustainable and dolphin safe tuna remains a top priority.**

*See* States News Service Press Release, May 31, 2012 (emphasis added).

39. Following the Appellate Body’s Report and recommendations to strengthen the DPCIA, the United States amended the Act to impose more exacting requirements on tuna caught outside the ETP. These amendments required that:

**all tuna sought to be entered into the United States as**



“dolphin-safe”, regardless of where it was caught or the nationality of the fishing vessel, must be accompanied by a certification that (a) no nets were intentionally set on dolphins in the set in which the tuna was caught; and (b) no dolphins were killed or seriously injured in the sets in which the tuna was caught.

See Official Summary, WTO DS381, current through Jan. 31, 2019 (emphasis added), *available at* [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds381\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds381_e.htm) (last visited May 10, 2019).

### **Chicken of the Sea’s Fishing Practices and Violation of its Dolphin-Safe Representations**

40. Several tuna companies use traditional pole-and-line and trolling methods of catching tuna. These products include Safe Catch, Ocean Naturals (for its Albacore tuna), and Wild Planet, which are caught using pole-and-line and trolling, and American Tuna, Whole Foods 365 Everyday Value brand (for its skipjack and albacore tuna), and Trader Joe’s (for yellowfin tuna), which are caught using exclusively pole-and-line.<sup>4</sup>

41. While more costly, these traditional methods ensure that dolphins (and other bycatch) are not harmed in the fishing process because fish are caught using barbless hooks and poles one at a time near the sea’s surface and unintended captured

<sup>4</sup> See Safe Catch, The Safe Catch Way, *available at* <https://safecatch.com/> (last visited May 3, 2019); Ocean Naturals, Albacore, Responsibly Caught, *available at* <https://oceannaturals.com/responsibly-caught/albacore-tuna/> (last visited May 3, 2019); Wild Planet, Good to the Core, Products-Tuna, *available at* <https://www.wildplanetfoods.com/products/tuna/> (last visited May 3, 2019); American Tuna, American Tuna, Home, *available at* <https://americantuna.com/> (last visited May 3, 2019); Whole Foods Market, Wild, Salt Added Tuna, 5 oz, Products>365 Everyday Value, *available at* <https://products.wholefoodsmarket.com/product/365-everyday-value-wild-salt-added-tuna-10e1c0> (last visited May 3, 2019); Whole Foods Market, Albacore Wild Tuna, 5 oz, Products>365 Everyday Value, *available at* <https://products.wholefoodsmarket.com/product/365-everyday-value-albacore-wild-tuna-5-oz-b83f86> (last visited May 3, 2019); Trader Joe’s, About Trader Joe’s Seafood, Announcements>Customer Updates (July 17, 2013), *available at* <https://www.traderjoes.com/announcement/a-note-to-our-customers-about-trader-joes-seafood> (last visited May 3, 2019).

1 species are easily released. Tuna caught by these methods are actually “dolphin-  
2 safe.”

3 42. Despite representing that all fishing techniques used to capture its tuna  
4 are compliant with Defendant’s “100% dolphin safe” policy, Chicken of the Sea is  
5 not among the tuna companies that use only dolphin-safe pole-and-line or trolling  
6 techniques to capture their tuna. In 2016, Chicken of the Sea reported only 7% of its  
7 tuna was pole-and-line caught. Thai Union Group, Sustainability Report 2016, at 65,  
8 *available at* [https://seachangesustainability.org/wp-content/uploads/ENG\\_Thai%20](https://seachangesustainability.org/wp-content/uploads/ENG_Thai%20Union_SD%20report_2016.pdf)  
9 [Union\\_SD%20report\\_2016.pdf](https://seachangesustainability.org/wp-content/uploads/ENG_Thai%20Union_SD%20report_2016.pdf). In 2017, Chicken of the Sea reported a de minimus  
10 1% increase. Thai Union Group, 2017 Sustainability Report, at 75, *available at*  
11 [https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-](https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-Sustainability-Report-Online-Format-1.pdf)  
12 [Sustainability-Report-Online-Format-1.pdf](https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-Sustainability-Report-Online-Format-1.pdf). Rather, Defendant admits the bulk of its  
13 tuna is purchased from fishing vessels that use purse seine nets and longlines to  
14 capture tuna. Chicken of the Sea, Know Your Seafood, *available at*  
15 [https://chickenofthesea.com/](https://chickenofthesea.com/company/know-your-seafood)  
16 [company/know-your-seafood](https://chickenofthesea.com/company/know-your-seafood) (last visited May 6, 2019). Both of these fishing  
17 methods kill and harm substantial numbers of dolphins.

18 43. Longlines consist of a 40-80 mile long main line to which many smaller  
19 branch lines with baited hooks are attached to catch tuna. Longlines are highly  
20 indiscriminate fishing gear as they attract large numbers of target and non-target fish,  
21 as well as dolphins, that get snagged on the hooks by their mouth or other body parts  
22 when they go after the bait and then remain on the line for extended periods of time  
23 as the lines are drawn in to the vessel and the catch is obtained. The hooked fish are  
24 retrieved by mechanically pulling the main line back onto the fishing vessel, which  
25 can take 10 hours. As dolphins are oxygen breathers, most do not survive the 10-  
26 hour retrieval process. And any that do are often not released.

27 44. Even when dolphins are mistakenly caught by these longlines, they are  
28

1 often not released. Rather, the fishermen that catch these dolphins often kill them  
2 onboard and have been photographed posing with their catch, mutilating the dolphins  
3 and removing their teeth, which can be used as currency. Because of the harm caused  
4 to non-target fish, longlines have been condemned by environmental groups like the  
5 World Wildlife Foundation (“WWF”) as an unsustainable fishing practice. WWF,  
6 Bycatch, Threats, *available at* [www.worldwildlife.org/](http://www.worldwildlife.org/threats/bycatch)  
7 [threats/bycatch](http://www.worldwildlife.org/threats/bycatch) (last visited May 3, 2019).

8 45. Purse seine nets also trap, kill, and harm substantial numbers of  
9 dolphins. Because purse seine nets can reach more than 6,500 feet in length and 650  
10 feet deep – the equivalent of 18 football fields by 2 football fields<sup>5</sup>– they often entrap  
11 dolphins when drawn closed, particularly because many of the purse seine fishing  
12 vessels use free floating rafts of flotsam known as fish aggregating devices, or FADs,  
13 to capture tuna.

14 46. FADs are known as floating death traps because dolphins and other  
15 marine life get entangled in the devices and their sheer numbers estimated at 30,000  
16 to 50,000 per year disrupt behavior and movement patterns of dolphins and other  
17 ocean species crucial to their survival.

18 47. While FADs are extremely effective at luring tuna, they also attract  
19 dolphins – particularly in the ETP where schools of tuna routinely gather beneath  
20 schools of dolphins to reduce the risk of predation. The tuna, dolphins, and other  
21 marine life are all then caught in the gigantic mile circumference purse seine nets that  
22 are deployed around the FAD to catch the tuna.

23 48. Since the 1980s, changes in the design of nets and fishing practices that  
24 allow dolphins to escape the net have significantly reduced dolphin mortality. Brown

25 \_\_\_\_\_  
26 <sup>5</sup> Elizabeth Brown, Fishing Gear 101: Purse Seines – The Encirclers (June 6, 2016),  
27 *available at* <http://safinacenter.org/2015/12/fishing-gear-101-purse-seines-the-encirclers/> (last visited May 3, 2019) (“Brown 2016”).

2016. Nonetheless, significant numbers of dolphins (over a thousand a year according to NOAA<sup>6</sup>) are still harmed by this method as unintended bycatch can account for more than 30% of a ship's haul. And, even though unintended bycatch may still be alive when dumped out of the nets onto the boat, by the time they are thrown back into the ocean, most are dead or near dead.

49. Even when dolphins escape the purse seine nets or are released alive from the longlines and nets, dolphins are harmed by these fishing practices.

50. Several studies have observed a number of indirect ways these fishing practices cause additional unobserved dolphin deaths, including: dolphin mother-calf separation as calves are dependent upon their mothers until weaned 1.5 years postpartum, and, even then, the calves do not reach full muscle maturation until age 3; acute cardiac and muscle damages caused by the exertion of avoiding or detangling from the FADs and purse seine nets; cumulative organ damage in released dolphins due to overheating from escape efforts; failed or impaired reproduction; compromised immune function; and unreported mortalities due to under-counting by purse-seine fishing vessels. *See, e.g.,* Department of Commerce, Reilly, *et al.*, Report of the Scientific Research Program Under the International Dolphin Conservation Program Act, NOAA Technical Memorandum NMFS (Mar. 2005), at 67-71, 76 *available at* <https://swfsc.noaa.gov/publications/TM/SWFSC/NOAA-TM-NMFS-SWFSC-372.PDF> (last visited May 3, 2019). *See also* Wade, *et al.*, *Depletion of spotted and spinner dolphins in the eastern tropical Pacific: modeling hypotheses for their lack of recovery*, Mar Ecol Prog Ser 343:1-14, 2007, at 11 (noting “[a] summary of recent research ... clearly illustrates that the purse seine fishery has the capacity to affect dolphins beyond the direct mortality observed as bycatches”); Kellar, *et al.*, *Pregnancy patterns of pantropical spotted*

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<sup>6</sup> NOAA 2016.

1 *dolphins (Stenella attenuata) in the eastern tropical Pacific determined from*  
2 *hormonal analysis of blubber biopsies and correlations with the purse-seine tuna*  
3 *fishery*, Mar Biol (2013) 160:3113-3124, at 3120 (tuna fishery reduces likelihood of  
4 female becoming pregnant or maintaining pregnancy).

5 51. Additional indirect harm to dolphins and the marine environment result  
6 from discarded and abandoned fishing gear, including FADs, which, according to the  
7 CEO of Thai Union, “is estimated to make up to 70% by weight of microplastics in  
8 the ocean”, Thai Union Group, 2018 Sustainability Report, at 7, *available at*  
9 [http://www.thaiunion.com/files/download/sustainability/20190502-tu-](http://www.thaiunion.com/files/download/sustainability/20190502-tu-sustainability-report-2018-en.pdf)  
10 [sustainability-report-2018-en.pdf](http://www.thaiunion.com/files/download/sustainability/20190502-tu-sustainability-report-2018-en.pdf), and among other harms “ensnares marine life.” *Id.*  
11 at 16.

12 52. As the indirect harmful effects of Defendant’s fishing practices also  
13 “likely result in [dolphin] mortality” (50 CFR § 216.3), Defendant’s tuna is not  
14 dolphin-safe. It is conservatively estimated that the total reported dolphin mortality  
15 is underestimated by 10-15% for spotted dolphins and 6-10% for spinner dolphins  
16 given these indirect harmful effects and unobserved and underreported kills. Reilly,  
17 *et al.*, 2005, at 7.

18 53. Because the use of FADs, purse seine nets, and longlines are  
19 unsustainable fishing practices, several companies that supply the U.S. tuna market  
20 will not source their tuna from boats that use these indiscriminate fishing methods.  
21 But Chicken of the Sea is not among these companies. For example, to avoid  
22 competition from its primary market rivals over the sale of FAD-free tuna (which  
23 would be more expensive), in or about February 2012, Chicken of the Sea allegedly  
24 entered into a written agreement with Bumble Bee Foods LLC and StarKist Co., who  
25 together with Defendant control 70-80% of the U.S. canned tuna market, whereby  
26 none of them would sell a branded FAD-free tuna product in the U.S. *See* Tom  
27 Seaman, Lawsuits: US brands colluded on not selling FAD-free tuna,

undercurrentnews>analysis>US Investigates Tuna Brands>Companies (July 18, 2016), *available at* <https://www.undercurrentnews.com/2016/07/18/lawsuits-us-brands-colluded-on-not-selling-fad-free-tuna/> (last visited May 3, 2019).

54. Because “Chicken of the Sea sources its tuna from destructive fishing methods that unnecessarily kill vulnerable marine life,” including “purse seines employing FADs,” and “provides little information on product labels about where and how its tuna is caught,” Greenpeace has consistently ranked Defendant near the bottom of its list of well-known tuna brands when it comes to responsible sourcing of tuna. Greenpeace, 2017 Tuna Shopping Guide, *available at* <https://www.greenpeace.org/usa/oceans/tuna-guide/> (last visited Apr. 17, 2019) (ranking Chicken of the Sea 15th out of 20).

**Chicken of the Sea Does Not Track and Report the Numbers of Dolphins Killed or Maimed in Capturing Its Tuna**

55. Defendant’s use of an alternative dolphin-safe logo on its tuna products requires it to track, audit, and spot check for accuracy that “no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught” from capture, to transshipment<sup>7</sup>, to cannery, to shelf. And, in the event that even a single dolphin is “killed or seriously injured” during the catch, Defendant must physically separate and store that catch from any tuna catches in which no dolphins were harmed (if any) and maintain records tracing the catch(es) in which dolphins were harmed back to the fishing vessel and trip. 50 CFR §216.91.

56. Unlike fisheries in the ETP, boats in the other oceanic regions that supply Chicken of the Sea tuna are not required to have independent observers

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<sup>7</sup> Transfer of a shipment from one carrier, or more commonly, from one vessel to another whereas in transit. Transshipments are usually made (1) where there is no direct air, land, or sea link between the consignor's and consignee's countries, (2) where the intended port of entry is blocked, or (3) to hide the identity of the port or country of origin. Business Dictionary, transshipment, *available at* <http://www.businessdictionary.com/definition/transshipment.html> (last visited May 3, 2019).



1 onboard to track and report the number of dolphins killed or seriously injured. 16  
2 U.S.C. §1385(d)(1). A declaration from the ship's captain suffices. 16 U.S.C.  
3 §1385(d)(1)(B). These declarations are limited to certifying that "no purse seine net  
4 was intentionally deployed on or used to encircle dolphins during the particular  
5 voyage on which the tuna was harvested" and do not require certification that FADs,  
6 gillnets, longlines and other dolphin-harming fishing techniques were not used. Nor  
7 must the captain quantify the number of dolphins killed or otherwise harmed.

8 57. Instead, Defendant is solely responsible for collecting information about  
9 the number of dolphins killed or seriously injured, which Defendant fails to do.  
10 According to Defendant, traceability is the "back bone" to ensuring its tuna is  
11 responsibly sourced and "without full traceability of our supply chain, we cannot  
12 begin to understand its risks", particularly because Defendant's supply chain includes  
13 over 300 captains, boat owners, and fishers. Thai Union Group, 2018 Sustainability  
14 Report, at 11, 25, *available at*  
15 [http://www.thaiunion.com/files/download/sustainability/20190502-tu-](http://www.thaiunion.com/files/download/sustainability/20190502-tu-sustainability-report-2018-en.pdf)  
16 [sustainability-report-2018-en.pdf](http://www.thaiunion.com/files/download/sustainability/20190502-tu-sustainability-report-2018-en.pdf). Yet, Defendant claims "tracing seafood's origins  
17 is challenging since activities that take place at sea can be difficult to monitor or  
18 supervise. All too often, only those on boats understand the conditions faced and the  
19 type of fishing being conducted." Thai Union Group, 2017 Sustainability Report, at  
20 68, *available at* [https://seachangesustainability.org/wp-content/uploads/Thai-Union-](https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-Sustainability-Report-Online-Format-1.pdf)  
21 [2017-Sustainability-Report-Online-Format-1.pdf](https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-Sustainability-Report-Online-Format-1.pdf). And, what Defendant does not  
22 mention is that there is a strong financial incentive for a captain to falsely omit any  
23 report of dolphin mortality or harm " as any catch that is not "dolphin-safe" is  
24 essentially worthless. Further, it is relatively simple to do this as, according to  
25 Defendant, the "fishing industry is reliant upon paper-based systems" (*id.* at 69), with  
26 reports typically filled in by hand – often after the vessel has returned to port –  
27 making it virtually impossible to adequately verify the information provided. The



1 potential and incentive for false reporting by its tuna suppliers make it even more  
 2 incumbent upon Defendant to independently track, trace, and report the number of  
 3 dolphins killed or harmed by Defendant's tuna fishing vessels. Even though  
 4 Defendant is able to do track, trace, and report the number of dolphins killed or  
 5 harmed by Defendant's tuna fishing vessels,, it does not. As confirmed on Chicken  
 6 of the Sea's webpage entitled "Dive into the story of your seafood", Chicken of the  
 7 Sea is able to trace each tuna product sold in the U.S. to the vessel that caught it, the  
 8 ocean where it was caught, the method used to catch the tuna, and the cannery where  
 9 it was processed. Chicken of the Sea, Dive into the story of your seafood, *available*  
 10 *at* <https://chickenofthesea.com/trace> (last visited May 6, 2019).

11 58. By purchasing its tuna from fishing vessels that use purse seine nets  
 12 deployed around FADs and/or longlines, Chicken of the Sea is able to reduce its tuna  
 13 product costs by using less costly fishing methods that kill or harm dolphins. This  
 14 enables Chicken of the Sea to sell its tuna at a lower price and capture more of the  
 15 declining tuna market, which has experienced a 40% per capita decline over the last  
 16 30 years.

17 **Chicken of the Sea's MSC Logo and Sustainable**  
 18 **Fishing Practices Misrepresentations**

19 59. Defendant's tuna pouches are labeled with a prominent blue MSC logo,  
 20 which stands for Marine Stewardship Council, on the front of the pouch to the  
 21 immediate left of the Chicken of the Sea product name which states: "Certified  
 22 Sustainable Seafood MSC [www.msc.org](http://www.msc.org)":



1           60. On its website, Defendant explains that: “MSC certified products must  
2 meet vigorous standards for sustainable fishing practices, like limiting bycatch  
3 (unwanted fish), avoid overfishing and protecting marine environment”. Chicken of  
4 the Sea, Marine Stewardship Council Certification, Sustainability, *available at*  
5 <https://chickenofthesea.com/msc> (last visited May 13, 2019).

6           61. Defendant explains that it is committed to a comprehensive approach to  
7 sustainability that it has trademarked “SeaChange®”, which includes its dolphin-safe  
8 policy, “following ISSF [International Seafood Sustainability Foundation]  
9 conservation measures such as traceability, bycatch mitigation and elimination of  
10 IUU fishing” (Thai Union, Annual Report 2015, at 77), working with WWF to utilize  
11 the best conservation measures, and MSC certification. Chicken of the Sea, Marine  
12 Stewardship Council Certification, Sustainability, *available at*  
13 <https://chickenofthesea.com/msc> (last visited May 13, 2019). Shortly before Thai  
14 Union launched SeaChange®, Chicken of the Sea publicly proclaimed that it is  
15 “committed to supporting Thai Union’s global sustainability strategy”. Chicken of  
16 the Sea, 2015 Sustainability Report, at 7, *available at*  
17 <http://sustainability.chickenofthesea.com/>.

18           62. Defendant’s sustainability representations and its use of the MSC  
19 certified sustainability logo are false, deceptive, and/or misleading because it uses  
20 longlines and purse seines employing FADs to capture its tuna that kill and/or harm  
21 dolphins and other marine life. As Defendant acknowledges, “sustainable sourcing  
22 is only achievable if we can trace where our tuna comes from”, including managing  
23 bycatch (Thai Union Group, Sustainability Report 2016, at 65, *available at*  
24 [https://seachangesustainability.org/wp-](https://seachangesustainability.org/wp-content/uploads/ENG_Thai%20Union_SD%20report_2016.pdf)  
25 [content/uploads/ENG\\_Thai%20Union\\_SD%20report\\_2016.pdf](https://seachangesustainability.org/wp-content/uploads/ENG_Thai%20Union_SD%20report_2016.pdf)), neither of which it  
26 does. Further, Defendant concedes: “[w]e recognize that we can’t call ourselves  
27 sustainable without ensuring that our suppliers use responsible fishing practices”

(Chicken of the Sea, 2015 Sustainability Report, at 47, *available at* <http://sustainability.chickenofthesea.com/>), which Defendant does not do, claiming it is too “difficult to monitor or supervise” “activities that take place at sea”. Thai Union Group, 2017 Sustainability Report, at 68, *available at* <https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-Sustainability-Report-Online-Format-1.pdf>. And, among the best evidence of falsity is Defendant’s CEO’s acknowledgement that nowhere near 100% of its tuna is sustainably sourced (in efforts to meet “ambitious” goal of 100% sustainably sourced tuna, hoping to reach 75% by 2020). Thai Union Group, 2018 Sustainability Report, at 7, *available at* <http://www.thaiunion.com/files/download/sustainability/20190502-tu-sustainability-report-2018-en.pdf>.

63. Notwithstanding their organizations’ names and purported sustainable fishing practice mission statements, neither the ISSF nor the MSC support the banning or effective control of FADs, longlines, or other unsustainable fishing techniques.

64. For example, in or about October 2018, over 800,000 tonnes of industrial boats were certified by the MSC – 10 times more than available before.<sup>8</sup> As the massive number of MSC certified vessels attests, certification does not guarantee only dolphin-safe sustainable fishing methods are used. Far from it, as the MSC will certify fisheries using gill nets even though it recognizes that gill nets “carry the risk of bycatch (accidental capture of unwanted species) and interaction with other marine animals”. MSC, Gillnets, *available at* <https://www.msc.org/what-we-are-doing/our-approach/fishing-methods-and-gear-types/gillnets> (last visited May 6, 2019). The MSC also will certify companies like Chicken of the Sea

<sup>8</sup> Fish4Ever, Fishy Business (October 4, 2018), Blog, *available at* <https://fish4ever.blog/2018/10/04/fishy-business/> (last visited May 8, 2019).

1 who use longlines to capture tuna even though it recognizes longlines “can have  
2 unintended interaction with non-target fish, sea birds and other marine life.” MSC,  
3 Longlines, *available at* [https://www.msc.org/what-we-are-doing/our-approach/](https://www.msc.org/what-we-are-doing/our-approach/fishing-methods-and-gear-types/longlines)  
4 [fishing-methods-and-gear-types/longlines](https://www.msc.org/what-we-are-doing/our-approach/fishing-methods-and-gear-types/longlines) (last visited May 6, 2019). And  
5 companies like Chicken of the Sea who use purse seine nets to catch tuna  
6 congregating around FADs also qualify for MSC certification even though the MSC  
7 recognizes FADs also “can result in higher levels of bycatch”. MSC, Purse seine,  
8 *available at* [https://www.msc.org/what-we-are-doing/our-approach/fishing-](https://www.msc.org/what-we-are-doing/our-approach/fishing-methods-and-gear-types/purse-seine)  
9 [methods-and-gear-types/purse-seine](https://www.msc.org/what-we-are-doing/our-approach/fishing-methods-and-gear-types/purse-seine) (last visited May 6, 2019). In fact, the only  
10 fisheries the MSC will not certify are those using explosives and poisons. MSC,  
11 Fishing methods and gear types, *available at* [https://www.msc.org/what-we-are-](https://www.msc.org/what-we-are-doing/our-approach/fishing-methods-and-gear-types)  
12 [doing/our-approach/fishing-methods-and-gear-types](https://www.msc.org/what-we-are-doing/our-approach/fishing-methods-and-gear-types) (last visited May 6, 2019). In  
13 short, Chicken of the Sea’s MSC label logo does not mean it uses only “certified  
14 sustainable” tuna fishing methods as represented, which Defendant does not do.  
15 Thus, Defendant’s labeling of its tuna pouches with the MSC logo and its sustainable  
16 fishing methods representations are false, misleading, and/or deceptive.

17 65. The MSC’s certification of companies like Chicken of the Sea who use  
18 indiscriminate, destructive, and unsustainable fishing techniques has caused the  
19 WWF – the very organization that created the MSC in 1997 – to criticize MSC’s  
20 certification protocols and to call for a number of specific changes, including a  
21 requirement to minimize unwanted bycatch. Greenpeace, Assessment of the Marine  
22 Stewardship Council (MSC) Fisheries Certification Programme, *available at*  
23 [https://www.greenpeace.org/usa/wp-content/uploads/legacy/Global/usa/report/](https://www.greenpeace.org/usa/wp-content/uploads/legacy/Global/usa/report/2009/7/assessment-of-the-msc.pdf)  
24 [2009/7/assessment-of-the-msc.pdf](https://www.greenpeace.org/usa/wp-content/uploads/legacy/Global/usa/report/2009/7/assessment-of-the-msc.pdf) (last visited Apr. 17, 2019).

25 66. The MSC also has been criticized as being unduly influenced by its  
26 financial dependence on the fishing industry that its standards govern. The MSC  
27 collects approximately \$20M per year in licensing fees from its certified members.

1 Its revenues are also dependent on the amount of fish certified, as it .5% of the value  
2 of the fish it certifies.

3 67. Like the MSC, the ISSF lacks the independence and impartiality to  
4 embrace and champion meaningful sustainability practices and industry reform. It  
5 was created in 2009 by Chicken of the Sea and several other big tuna companies and  
6 its funding comes from corporate fees which are several hundreds of thousands of  
7 dollars for large companies like Chicken of the Sea. As noted by Greenpeace when  
8 refusing an invite to join ISSF's Environmental Stakeholder Committee, the "ISSF's  
9 role [is] to deflect attention from the real problems, and to delay adoption of real  
10 solutions that its corporate members would prefer to avoid" such as banning FADs  
11 and other harmful fishing techniques that its corporate members use and simply  
12 allows its members "to brandish their ISSF membership as a way to deflect  
13 criticism." Greenpeace, How the International Seafood Sustainability Foundation  
14 (ISSF) Blocks Environmental Action, available at [https://www.greenpeace.org/usa/](https://www.greenpeace.org/usa/oceans/sustainable-seafood/how-international-seafood-sustainability-foundation-blocks-environmental-action/)  
15 [oceans/sustainable-seafood/how-international-seafood-sustainability-foundation-](https://www.greenpeace.org/usa/oceans/sustainable-seafood/how-international-seafood-sustainability-foundation-blocks-environmental-action/)  
16 [blocks-environmental-action/](https://www.greenpeace.org/usa/oceans/sustainable-seafood/how-international-seafood-sustainability-foundation-blocks-environmental-action/) (last visited Apr. 17, 2019).

17 68. Because Chicken of the Sea uses longlines, purse seine nets, and FADs,  
18 and other well-known dolphin-harming fishing techniques, notwithstanding its MSC  
19 certification and ISSF membership, Chicken of the Sea's labeling of its tuna products  
20 with the MSC certified sustainability logo and its sustainable fishing practices  
21 representations are false, misleading, and/or deceptive.

22 **Chicken of the Sea, Unlike Many Other Tuna Companies, Does Not Use**  
23 **Dolphin-Safe Tuna Fishing Methods**

24 69. Unlike several other tuna companies who sell to the U.S. market,  
25 Defendant has not adopted dolphin-safe fishing practices, such as pole-and-line,  
26 trolling, and/or handline catch methods, whereby fishermen catch one fish at a time  
27 and release unwanted species soon after a fish takes the bait.

70. Most U.S. retailers have sustainability guidelines and expectations of their seafood suppliers that include: using recognized dolphin-safe tuna capture methods, having programs in place to trace the tuna back to the boat and place of capture, and guaranteeing the catch method used. *See, e.g.*, Whole Foods Market, Sustainable Canned Tuna, available at <https://www.wholefoodsmarket.com/sustainable-canned-tuna> (last visited Apr. 17, 2019); Whole Foods Market, Canned Tuna Sourcing Policy, available at [http://assets.wholefoodsmarket.com/www/departments/seafood/Whole\\_Foods\\_Market\\_Canned\\_Tuna\\_Sourcing\\_Policy\\_102017.pdf](http://assets.wholefoodsmarket.com/www/departments/seafood/Whole_Foods_Market_Canned_Tuna_Sourcing_Policy_102017.pdf) (last visited Apr. 17, 2019); PR Newswire, Safeway Announces New Sustainable Sourcing Practice for Tuna (Feb. 10, 2012), available at <https://www.prnewswire.com/news-releases/safeway-announces-new-sustainable-sourcing-practice-for-tuna-139096714.html> (last visited April 17, 2019); Albertsons/Safeway, Supplier Sustainability Guidelines and Expectations (August 2015), at 3, available at [https://suppliers.safeway.com/usa/pdf/supplier\\_sustainability\\_expectations.pdf](https://suppliers.safeway.com/usa/pdf/supplier_sustainability_expectations.pdf) (last visited May 3, 2019) (“Safeway-Albertsons will strive to purchase environmentally preferable products”); H-E-B, H-E-B seafood policy, available at <https://www.heb.com/static-page/article-template/H-E-B-Seafood-Policy> (last visited May 3, 2019); Sprouts, Sustainable Seafood Policy, available at <https://about.sprouts.com/product-sourcing/sustainable-seafood-policy/> (last visited Apr. 17, 2019); Giant Eagle, Tuna Policy, available at <https://www.gianteagle.com/about-us/sustainable-seafood/tuna-policy> (last visited April 17, 2019) (“Our goal is to source tuna only from healthy and well-managed stocks, from fisheries using the most current best practice in methods, bycatch reduction and environmentally responsible, socially responsible, Non GMO, BPA free and priced reasonably for our consumers”); Wegmans, Seafood Sustainability, available at <https://www.wegmans.com/about-us/making-a-difference/sustainability-at-wegmans/seafood-sustainability.html> (last visited Apr. 17, 2019); Publix, Publix



1 Sustainability Report 2019, available at [https://sustainability.publix.com/wp-](https://sustainability.publix.com/wp-content/uploads/sustainability-report.pdf)  
2 [content/uploads/sustainability-report.pdf](https://sustainability.publix.com/wp-content/uploads/sustainability-report.pdf) (last visited Apr. 17, 2019) (supplier  
3 commitment to sustainable fishing “helps us decide whether to sell a product,  
4 enhance fisheries through improvement projects or halt the sale of a product until the  
5 issue is resolved.”). Tuna companies who do not use dolphin-safe catch methods and  
6 do not adhere to traceability requirements can expect retailers to refuse to sell their  
7 products.

8 71. By expressing a commitment to sustainability, labeling its tuna products  
9 as dolphin-safe, labeling its tuna pouches as MSC certified, not tracking and  
10 reporting the number of dolphins killed and harmed in capturing its tuna, and not  
11 separating tuna that is not dolphin-safe from tuna caught where no dolphins were  
12 harmed (if any), Defendant is able to sell its Chicken of the Sea tuna products in  
13 several major retail stores to which it would otherwise be denied entry.

14 **Chicken of the Sea’s Use of the MSC Logo and Dolphin-Safe Sustainability**  
15 **Representations are False, Misleading, and/or Deceptive, and are Systemic**  
16 **Acts of Mail and Wire Fraud**

17 72. Because dolphins are killed and harmed by the fishing methods used to  
18 catch the tuna in Defendant’s products; Defendant does not adequately track, verify,  
19 audit, and spot check the number of dolphins killed and harmed; and Defendant does  
20 not separately store the tuna that is not dolphin-safe, Chicken of the Sea’s use of the  
21 alternative dolphin-safe logo and its dolphin-safe representations, its use of the MSC  
22 logo, and its sustainability representations are false, misleading, and/or deceptive, as  
23 well as systemic acts of mail and wire fraud.

24 73. Reasonable consumers rightly believe that “dolphin-safe” means “no”  
25 dolphins were harmed in the process of catching the tuna in Defendant’s products.  
26 That is precisely the regulatory definition of dolphin-safe. 50 CFR §§216.3, 216.91.  
27 And it is the message that Chicken of the Sea has consistently conveyed to the public



1 in its widespread and long-term advertising and marketing campaign, including its  
2 2016 campaign to “increase our consumer engagement on sustainability through our  
3 website and social media platforms.” Chicken of the Sea, 2015 Sustainability Report,  
4 at 5, *available at* <http://sustainability.chickenofthesea.com/>. As Defendant readily  
5 acknowledges and boasts, it is “highly engaged” with consumers through its website,  
6 Facebook, Twitter, online newsletter and 24/7 hotline. Chicken of the Sea,  
7 Sustainability Report 2012 at 4, *available at*  
8 [https://chickenofthesea.com/uploads/pdf/COSI\\_2014\\_Sustainability\\_Report.pdf](https://chickenofthesea.com/uploads/pdf/COSI_2014_Sustainability_Report.pdf).

9 74. Dolphin safety matters to consumers and it materially affects their  
10 decision whether to purchase Chicken of the Sea tuna. So, too, does the use of  
11 sustainable fishing practices that, among other things, minimize the amount of  
12 unwanted bycatch. Thai Union Group, 2017 Sustainability Report at 68, *available*  
13 *at* [https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-](https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-Sustainability-Report-Online-Format-1.pdf)  
14 [Sustainability-Report-Online-Format-1.pdf](https://seachangesustainability.org/wp-content/uploads/Thai-Union-2017-Sustainability-Report-Online-Format-1.pdf) (“Consumers around the globe want to  
15 know where the food on their plates comes from and that it meets the highest quality  
16 and sustainability standards”). If consumers, including Plaintiffs, knew Chicken of  
17 the Sea’s tuna products were not dolphin-safe and/or not caught using sustainable  
18 fishing methods, they would not buy Defendant’s tuna products, particularly because  
19 there are several competing brands of like tuna products that are dolphin-safe and  
20 sustainably sourced. Thus, Plaintiffs and Class members are entitled to a full refund.

21 75. Any nutrient value notwithstanding, because Defendant’s false dolphin-  
22 safe representations and/or unsustainable catch methods taint the entire purchase –  
23 from whether Chicken of the Sea tuna that was not dolphin-safe and/or not  
24 sustainably caught would even be sold by retailers to whether consumers would  
25 purchase Chicken of the Sea tuna that was not dolphin-safe and/or sustainably caught  
26 if available for purchase – consumers, like Plaintiffs here, are entitled to a full refund.  
27 The importance consumers place upon dolphin safety and their abject distaste for

1 indiscriminate and destructive fishing methods makes tuna fish consumers no  
2 different from Hindus attributing zero value to beef products, or vegans attributing  
3 zero value to animal products, or vegetarians attributing zero value to meat, fish, and  
4 poultry, no matter what nutritive value these products may otherwise have. Further,  
5 if the retailers of Defendant's tuna products knew they were not sustainably sourced  
6 and dolphin-safe, they would refuse to sell Defendant's tuna products. This too  
7 entitles Plaintiffs and Class members to a full refund.

8         76. Alternatively, Plaintiffs and Class members are entitled to the premium  
9 attributable to the dolphin-safe and sustainable fishing practices representations.

10         77. Plaintiffs bring this action on behalf of themselves and other similarly  
11 situated consumers who purchased the tuna products to halt the dissemination of this  
12 false, misleading, and deceptive advertising message, correct the misleading  
13 perception it has created in the minds of consumers, and obtain redress for those who  
14 have purchased the tuna products. Based on Defendant's violation of RICO, unjust  
15 enrichment, and violations of California, Florida, New York, New Jersey, and  
16 Minnesota unfair competition and deceptive trade practice laws (detailed below),  
17 Plaintiffs seek damages, declaratory, injunctive, and restitutionary relief for  
18 consumers who purchased the tuna products.

#### 19                                   **JURISDICTION AND VENUE**

20         78. This Court has original jurisdiction over the subject matter of this action  
21 pursuant to 28 U.S.C. §1331, because Plaintiffs' claims arise under RICO, 18 U.S.C.  
22 §1962. The Court has supplemental jurisdiction over Plaintiffs' state law claims  
23 pursuant to 28 U.S.C. §1367. This Court also has jurisdiction pursuant to 28 U.S.C.  
24 §1332, as modified by the Class Action Fairness Act of 2005, because at least one  
25 member of the Class is a citizen of a different state than Defendant, there are more  
26 than 100 members of the Class, and the aggregate amount in controversy exceeds  
27 \$5,000,000, exclusive of interest and costs.

79. Venue properly lies in this District pursuant to 28 U.S.C. §1391(a), because Defendant has transacted substantial business within this District within the meaning of 28 U.S.C. §1391(a), as defined in 28 U.S.C. §1391(c), and because a substantial part of the events giving rise to the claims alleged herein occurred in the Northern District of California. Specifically, Defendant marketed and sold its tuna products throughout the State of California, including throughout this District, and California Plaintiffs Duggan and Myers, as well as other members of the Class, purchased Defendant's falsely advertised and labeled tuna products from retail outlets located within this District.

80. This Court has personal jurisdiction over Defendant pursuant to 18 U.S.C. §1965(b) and (d). Defendant is authorized to conduct and do business in California, including this District. Defendant marketed, promoted, distributed, and sold the tuna products in California, and Defendant has sufficient minimum contacts with this State and/or sufficiently availed itself of the markets in this State through its promotion, sales, distribution, and marketing within this State, including this District, to render the exercise of jurisdiction by this Court permissible.

## PARTIES

81. Plaintiff Tara Duggan resides in Marin County, California and is a citizen of California. Throughout the relevant period, Plaintiff Duggan routinely was exposed to, saw, and relied upon Defendant's dolphin-safe representations by viewing the dolphin-safe mark on the Chicken of the Sea canned tuna in water at stores such as Lucky's and Fairfax Market in her area. Plaintiff Duggan purchased the tuna products for approximately \$3.50. At all relevant times, Plaintiff Duggan was unaware that the tuna was not dolphin-safe as represented and was caught using fishing methods that are harmful to dolphins. Had Plaintiff Duggan known the tuna was not dolphin-safe and/or had Defendant not represented the tuna was dolphin-safe, Plaintiff Duggan would not have purchased the tuna products. As a result,

1 Plaintiff Duggan suffered injury in fact and lost money at the time of purchase.  
2 Plaintiff Duggan continues to desire to purchase Chicken of the Sea products that are  
3 dolphin-safe, and she would purchase such a product manufactured by Defendant if  
4 it were possible to determine prior to purchase whether dolphins were harmed by  
5 Defendant's operations. Indeed, Plaintiff Duggan regularly visits stores such as  
6 Lucky's and Fairfax Market where Defendant's tuna products are sold, but will be  
7 unable to rely upon the dolphin-safe representations and will not be able to determine  
8 if Defendant's products are dolphin-safe when deciding whether to purchase the tuna  
9 products in the future.

10 82. Plaintiff Lori Myers resides in Moreno Valley, California and is a citizen  
11 of California. Throughout the relevant period, Plaintiff Myers routinely was exposed  
12 to, saw, and relied upon Defendant's dolphin-safe representations by viewing the  
13 dolphin-safe mark on the Chicken of the Sea canned and pouched tuna in water  
14 through Instacart, Amazon, and at Ralph's in Canyon Crest Town Center in  
15 Riverside, California. Plaintiff Myers purchased the tuna products many times  
16 throughout the relevant period. At all relevant times, Plaintiff Myers was unaware  
17 that the tuna was not dolphin-safe as represented and was caught using fishing  
18 methods that are harmful to dolphins. Had Plaintiff Myers known the tuna was not  
19 dolphin-safe and/or had Defendant not represented that the tuna was dolphin-safe,  
20 Plaintiff Myers would not have purchased the Chicken of the Sea tuna products. As  
21 a result, Plaintiff Myers suffered injury in fact and lost money at the time of purchase.  
22 Plaintiff Myers continues to desire to purchase Chicken of the Sea tuna products that  
23 are dolphin-safe, and she would purchase such a product manufactured by Defendant  
24 if it were possible to determine prior to purchase whether dolphins were harmed by  
25 Defendant's operations. Indeed, Plaintiff Myers regularly purchases online and visits  
26 stores such as Ralph's and Stater Brothers, where Defendant's tuna products are sold,  
27 but will be unable to rely upon the dolphin-safe representations and will not be able

1 to determine if Defendant's products are dolphin-safe when deciding whether to  
2 purchase the tuna products in the future.

3 83. Plaintiff Angela Cosgrove resides in Pompano Beach, Florida and is a  
4 citizen of Florida. Throughout the relevant period, Plaintiff Cosgrove routinely was  
5 exposed to, saw, and relied upon Defendant's dolphin-safe representations by  
6 viewing the dolphin-safe mark on the Chicken of the Sea canned tuna in water and  
7 canned yellowfin tuna at various stores in her area, including Big Lots, Publix, and  
8 Walmart. Plaintiff Cosgrove purchased the canned tuna products many times  
9 throughout the relevant period. At all relevant times, Plaintiff Cosgrove believed the  
10 tuna products were dolphin-safe and was unaware that the tuna was not dolphin-safe  
11 as represented and was caught using fishing methods that are harmful to dolphins.  
12 Had Plaintiff Cosgrove known the tuna was not dolphin-safe and/or had Defendant  
13 not represented that the tuna was dolphin-safe, Plaintiff Cosgrove would not have  
14 purchased the Chicken of the Sea tuna products. As a result, Plaintiff Cosgrove  
15 suffered injury in fact and lost money at the time of purchase. Plaintiff Cosgrove  
16 continues to desire to purchase Chicken of the Sea tuna products that are dolphin-  
17 safe, and she would purchase such a product manufactured by Defendant if it were  
18 possible to determine prior to purchase whether dolphins were harmed by  
19 Defendant's operations. Indeed, Plaintiff Cosgrove regularly visits stores such as Big  
20 Lots, Publix, and Walmart, where Defendant's tuna products are sold, but will be  
21 unable to rely upon the dolphin-safe representations and will not be able to determine  
22 if Defendant's products are dolphin-safe when deciding whether to purchase the tuna  
23 products in the future.

24 84. Plaintiff Robert McQuade resides in Bronxville, New York and is a  
25 citizen of New York. Throughout the relevant period, Plaintiff Robert McQuade  
26 routinely was exposed to, saw, and relied upon Defendant's dolphin-safe  
27 representations by viewing the dolphin-safe mark on the Chicken of the Sea tuna  
28

1 products including canned tuna in water and tuna in pouches at various stores in  
2 Bronxville, Yonkers, Eastchester and Tuckahoe, New York, including ACME, Shop-  
3 Rite, Stop & Shop, and Costco. Plaintiff Robert McQuade purchased the tuna  
4 products many times throughout the relevant period. At all relevant times, Plaintiff  
5 Robert McQuade believed the tuna products were dolphin-safe and was unaware that  
6 the tuna was not dolphin-safe as represented and was caught using fishing methods  
7 that are harmful to dolphins. Had Plaintiff Robert McQuade known the tuna was not  
8 dolphin-safe and/or had Defendant not represented that the tuna was dolphin-safe,  
9 Plaintiff Robert McQuade would not have purchased the Chicken of the Sea tuna  
10 products. As a result, Plaintiff Robert McQuade suffered injury in fact and lost  
11 money at the time of purchase. Plaintiff Robert McQuade continues to desire to  
12 purchase Chicken of the Sea tuna products that are dolphin-safe, and he would  
13 purchase such a product manufactured by Defendant if it were possible to determine  
14 prior to purchase whether dolphins were harmed by Defendant's operations. Indeed,  
15 Plaintiff Robert McQuade regularly visits stores such as ACME, Shop-Rite, Stop &  
16 Shop, and Costco, where Defendant's tuna products are sold, but will be unable to  
17 rely upon the dolphin-safe representations and will not be able to determine if  
18 Defendant's products are dolphin-safe when deciding whether to purchase the tuna  
19 products in the future.

20 85. Plaintiff Colleen McQuade resides in Bronxville, New York and is a  
21 citizen of New York. Throughout the relevant period, Plaintiff Colleen McQuade  
22 routinely was exposed to, saw, and relied upon Defendant's dolphin-safe  
23 representations by viewing the dolphin-safe mark on the Chicken of the Sea tuna  
24 products, including canned tuna in water and tuna in pouches at various stores in  
25 Bronxville, Yonkers, Eastchester and Tuckahoe, New York, including ACME, Shop-  
26 Rite, Stop & Shop and Costco. Plaintiff Colleen McQuade purchased the tuna  
27 products many times throughout the relevant period. At all relevant times, Plaintiff

1 Colleen McQuade believed the tuna products were dolphin-safe and was unaware  
2 that the tuna was not dolphin-safe as represented and was caught using fishing  
3 methods that are harmful to dolphins. Had Plaintiff Colleen McQuade known the  
4 tuna was not dolphin-safe and/or had Defendant not represented that the tuna was  
5 dolphin-safe, Plaintiff Colleen McQuade would not have purchased the Chicken of  
6 the Sea tuna products. As a result, Plaintiff Colleen McQuade suffered injury in fact  
7 and lost money at the time of purchase. Plaintiff Colleen McQuade continues to  
8 desire to purchase Chicken of the Sea tuna products that are dolphin-safe, and she  
9 would purchase such a product manufactured by Defendant if it were possible to  
10 determine prior to purchase whether dolphins were harmed by Defendant's  
11 operations. Indeed, Plaintiff Colleen McQuade regularly visits stores such as ACME,  
12 Shop-Rite, Stop & Shop, and Costco, where Defendant's tuna products are sold, but  
13 will be unable to rely upon the dolphin-safe representations and will not be able to  
14 determine if Defendant's products are dolphin-safe when deciding whether to  
15 purchase the tuna products in the future.

16 86. Plaintiff Anthony Luciano resides in Eastchester, New York and is a  
17 citizen of New York. Throughout the relevant period, Plaintiff Anthony Luciano  
18 routinely was exposed to, saw, and relied upon Defendant's dolphin-safe  
19 representations by viewing the dolphin-safe mark on the Chicken of the Sea tuna  
20 products, including canned tuna in water and oil at various stores in Eastchester,  
21 Yonkers, Tuckahoe, New Rochelle and the Bronx, New York, including Stop &  
22 Shop, Shop Rite, ACME, Foodtown, and Costco. Plaintiff Anthony Luciano  
23 purchased the tuna products many times throughout the relevant period. At all  
24 relevant times, Plaintiff Anthony Luciano believed the tuna products were dolphin-  
25 safe and was unaware that the tuna was not dolphin-safe as represented and was  
26 caught using fishing methods that are harmful to dolphins. Had Plaintiff Anthony  
27 Luciano known the tuna was not dolphin-safe and/or had Defendant not represented



1 that the tuna was dolphin-safe, Plaintiff Anthony Luciano would not have purchased  
2 the Chicken of the Sea tuna products. As a result, Plaintiff Anthony Luciano suffered  
3 injury in fact and lost money at the time of purchase. Plaintiff Anthony Luciano  
4 continues to desire to purchase Chicken of the Sea tuna products that are dolphin-  
5 safe, and he would purchase such a product manufactured by Defendant if it were  
6 possible to determine prior to purchase whether dolphins were harmed by  
7 Defendant's operations. Indeed, Plaintiff Anthony Luciano regularly visits stores  
8 such as Stop & Shop, Shop Rite, ACME, Foodtown, and Costco , where Defendant's  
9 tuna products are sold, but will be unable to rely upon the dolphin-safe  
10 representations and will not be able to determine if Defendant's products are dolphin-  
11 safe when deciding whether to purchase the tuna products in the future.

12 87. Plaintiff Lori Luciano resides in Eastchester, New York and is a citizen  
13 of New York. Throughout the relevant period, Plaintiff Lori Luciano routinely was  
14 exposed to, saw, and relied upon Defendant's dolphin-safe representations by  
15 viewing the dolphin-safe mark on the Chicken of the Sea tuna products, including  
16 canned tuna in water and oil at various stores in Eastchester, Yonkers, Tuckahoe,  
17 New Rochelle and the Bronx, New York, including Stop & Shop, Shop Rite, ACME,  
18 Foodtown, and Costco. Plaintiff Lori Luciano purchased the tuna products many  
19 times throughout the relevant period. At all relevant times, Plaintiff Lori Luciano  
20 believed the tuna products were dolphin-safe and was unaware that the tuna was not  
21 dolphin-safe as represented and was caught using fishing methods that are harmful  
22 to dolphins. Had Plaintiff Lori Luciano known the tuna was not dolphin-safe and/or  
23 had Defendant not represented that the tuna was dolphin-safe, Plaintiff Lori Luciano  
24 would not have purchased the Chicken of the Sea tuna products. As a result, Plaintiff  
25 Lori Luciano suffered injury in fact and lost money at the time of purchase. Plaintiff  
26 Lori Luciano continues to desire to purchase Chicken of the Sea tuna products that  
27 are dolphin-safe, and she would purchase such a product manufactured by Defendant

1 if it were possible to determine prior to purchase whether dolphins were harmed by  
2 Defendant's operations. Indeed, Plaintiff Lori Luciano regularly visits stores such as  
3 Stop & Shop, Shop Rite, ACME, Foodtown, and Costco , where Defendant's tuna  
4 products are sold, but will be unable to rely upon the dolphin-safe representations  
5 and will not be able to determine if Defendant's products are dolphin-safe when  
6 deciding whether to purchase the tuna products in the future.

7 88. Plaintiff Robert Nugent resides in Staten Island, New York and is a  
8 citizen of New York. Throughout the relevant period, Plaintiff Nugent routinely was  
9 exposed to, saw, and relied upon Defendant's dolphin-safe representations by  
10 viewing the dolphin-safe mark on the Chicken of the Sea tuna products, including  
11 canned tuna in water, at a Stop & Shop, Shop Rite and Key Food in Staten Island,  
12 New York. Plaintiff Nugent purchased the tuna products many times throughout the  
13 relevant period. At all relevant times, Plaintiff Nugent believed the tuna products  
14 were dolphin-safe and was unaware that the tuna was not dolphin-safe as represented  
15 and was caught using fishing methods that are harmful to dolphins. Had Plaintiff  
16 Nugent known the tuna was not dolphin-safe and/or had Defendant not represented  
17 that the tuna was dolphin-safe, Plaintiff Nugent would not have purchased the  
18 Chicken of the Sea tuna products. As a result, Plaintiff Nugent suffered injury in fact  
19 and lost money at the time of purchase. Plaintiff Nugent continues to desire to  
20 purchase Chicken of the Sea tuna products that are dolphin-safe, and he would  
21 purchase such a product manufactured by Defendant if it were possible to determine  
22 prior to purchase whether dolphins were harmed by Defendant's operations. Indeed,  
23 Plaintiff Nugent regularly visits stores such as Stop & Shop, Shop Rite and Key Food  
24 where Defendant's tuna products are sold, but will be unable to rely upon the dolphin-  
25 safe representations and will not be able to determine if Defendant's products are  
26 dolphin-safe when deciding whether to purchase the tuna products in the future.

27 89. Plaintiff James Borruso resides in Staten Island, New York and is a  
28

1 citizen of New York. Throughout the relevant period, Plaintiff Borruso routinely  
2 was exposed to, saw, and relied upon Defendant's dolphin-safe representations by  
3 viewing the dolphin-safe mark on the Chicken of the Sea tuna products, including  
4 canned tuna in water and oil, at a Stop & Shop and Pathmark in Staten Island, New  
5 York. Plaintiff Borruso purchased the tuna products many times throughout the  
6 relevant period. At all relevant times, Plaintiff Borruso believed the tuna products  
7 were dolphin-safe and was unaware that the tuna was not dolphin-safe as represented  
8 and was caught using fishing methods that are harmful to dolphins. Had Plaintiff  
9 Borruso known the tuna was not dolphin-safe and/or had Defendant not represented  
10 that the tuna was dolphin-safe, Plaintiff Borruso would not have purchased the  
11 Chicken of the Sea tuna products. As a result, Plaintiff Borruso suffered injury in  
12 fact and lost money at the time of purchase. Plaintiff Borruso continues to desire to  
13 purchase Chicken of the Sea tuna products that are dolphin-safe, and he would  
14 purchase such a product manufactured by Defendant if it were possible to determine  
15 prior to purchase whether dolphins were harmed by Defendant's operations. Indeed,  
16 Plaintiff Borruso regularly visits stores such as Stop & Shop and Pathmark, where  
17 Defendant's tuna products are sold, but will be unable to rely upon the dolphin-safe  
18 representations and will not be able to determine if Defendant's products are dolphin-  
19 safe when deciding whether to purchase the tuna products in the future.

20 90. Plaintiff Fidel Jamelo resides in Bronx, New York and is a citizen of  
21 New York. Throughout the relevant period, Plaintiff Fidel Jamelo routinely was  
22 exposed to, saw, and relied upon Defendant's dolphin-safe representations by  
23 viewing the dolphin-safe mark on the Chicken of the Sea canned tuna products,  
24 including canned tuna in water, at a Costco in New Rochelle, New York. Plaintiff  
25 Fidel Jamelo purchased the tuna products many times throughout the relevant period.  
26 At all relevant times, Plaintiff Fidel Jamelo believed the tuna products were dolphin-  
27 safe and was unaware that the tuna was not dolphin-safe as represented and was

1 caught using fishing methods that are harmful to dolphins. Had Plaintiff Fidel Jamelo  
2 known the tuna was not dolphin-safe and/or had Defendant not represented that the  
3 tuna was dolphin-safe, Plaintiff Fidel Jamelo would not have purchased the Chicken  
4 of the Sea tuna products. As a result, Plaintiff Fidel Jamelo suffered injury in fact  
5 and lost money at the time of purchase. Plaintiff Fidel Jamelo continues to desire to  
6 purchase Chicken of the Sea tuna products that are dolphin-safe, and he would  
7 purchase such a product manufactured by Defendant if it were possible to determine  
8 prior to purchase whether dolphins were harmed by Defendant's operations. Indeed,  
9 Plaintiff Fidel Jamelo regularly visits stores such as Costco, where Defendant's tuna  
10 products are sold, but will be unable to rely upon the dolphin-safe representations  
11 and will not be able to determine if Defendant's products are dolphin-safe when  
12 deciding whether to purchase the tuna products in the future.

13 91. Plaintiff Jocelyn Jamelo resides in Bronx, New York and is a citizen of  
14 New York. Throughout the relevant period, Plaintiff Jocelyn Jamelo routinely was  
15 exposed to, saw, and relied upon Defendant's dolphin-safe representations by  
16 viewing the dolphin-safe mark on the Chicken of the Sea canned tuna products,  
17 including canned tuna in water, at a Costco in New Rochelle, New York. Plaintiff  
18 Jocelyn Jamelo purchased the tuna products many times throughout the relevant  
19 period. At all relevant times, Plaintiff Jocelyn Jamelo believed the tuna products  
20 were dolphin-safe and was unaware that the tuna was not dolphin-safe as represented  
21 and was caught using fishing methods that are harmful to dolphins. Had Plaintiff  
22 Jocelyn Jamelo known the tuna was not dolphin-safe and/or had Defendant not  
23 represented that the tuna was dolphin-safe, Plaintiff Jocelyn Jamelo would not have  
24 purchased the Chicken of the Sea tuna products. As a result, Plaintiff Jocelyn Jamelo  
25 suffered injury in fact and lost money at the time of purchase. Plaintiff Jocelyn  
26 Jamelo continues to desire to purchase Chicken of the Sea tuna products that are  
27 dolphin-safe, and she would purchase such a product manufactured by Defendant if

1 it were possible to determine prior to purchase whether dolphins were harmed by  
2 Defendant's operations. Indeed, Plaintiff Jocelyn Jamelo regularly visits stores such  
3 as Costco, where Defendant's tuna products are sold, but will be unable to rely upon  
4 the dolphin-safe representations and will not be able to determine if Defendant's  
5 products are dolphin-safe when deciding whether to purchase the tuna products in  
6 the future.

7       92. Plaintiff Ken Petrovcik resides in Belvidere, New Jersey, and is a citizen  
8 of New Jersey. Throughout the relevant period, Plaintiff Petrovcik routinely was  
9 exposed to, saw, and relied upon Defendant's dolphin-safe representations by  
10 viewing the dolphin-safe mark on the Chicken of the Sea canned tuna products,  
11 including canned tuna in water, at various stores in Belvidere, New Jersey, including  
12 Walmart and Shop-Rite. Plaintiff Petrovcik purchased the tuna products many times  
13 throughout the relevant period. At all relevant times, Plaintiff Petrovcik believed the  
14 tuna products were dolphin-safe and was unaware that the tuna was not dolphin-safe  
15 as represented and was caught using fishing methods that are harmful to dolphins.  
16 Had Plaintiff Petrovcik known the tuna was not dolphin-safe and/or had Defendant  
17 not represented that the tuna was dolphin-safe, Plaintiff Petrovcik would not have  
18 purchased the Chicken of the Sea tuna products. As a result, Plaintiff Petrovcik  
19 suffered injury in fact and lost money at the time of purchase. Plaintiff Petrovcik  
20 continues to desire to purchase Chicken of the Sea tuna products that are dolphin-  
21 safe, and he would purchase such a product manufactured by Defendant if it were  
22 possible to determine prior to purchase whether dolphins were harmed by  
23 Defendant's operations. Indeed, Plaintiff Petrovcik regularly visits stores such as  
24 Walmart and Shop-Rite, where Defendant's tuna products are sold, but will be unable  
25 to rely upon the dolphin-safe representations and will not be able to determine if  
26 Defendant's products are dolphin-safe when deciding whether to purchase the tuna  
27 products in the future.

1           93. Plaintiff Avraham Isac Zelig resides in Manalapan, New Jersey, and is a  
2 citizen of New Jersey. Throughout the relevant period, Plaintiff Zelig routinely was  
3 exposed to, saw, and relied upon Defendant's dolphin-safe representations by  
4 viewing the dolphin-safe mark on the Chicken of the Sea canned tuna products,  
5 including canned tuna in water, at various stores, including Costco in Staten Island,  
6 New York and Costco and Shop-Rite in Marlboro, New Jersey. Plaintiff Zelig  
7 purchased the tuna products many times throughout the relevant period. At all  
8 relevant times, Plaintiff Zelig believed the tuna products were dolphin-safe and was  
9 unaware that the tuna was not dolphin-safe as represented and was caught using  
10 fishing methods that are harmful to dolphins. Had Plaintiff Zelig known the tuna was  
11 not dolphin-safe and/or had Defendant not represented that the tuna was dolphin-  
12 safe, Plaintiff Zelig would not have purchased the Chicken of the Sea tuna products.  
13 As a result, Plaintiff Zelig suffered injury in fact and lost money at the time of  
14 purchase. Plaintiff Zelig continues to desire to purchase Chicken of the Sea tuna  
15 products that are dolphin-safe, and he would purchase such a product manufactured  
16 by Defendant if it were possible to determine prior to purchase whether dolphins  
17 were harmed by Defendant's operations. Indeed, Plaintiff Zelig regularly visits stores  
18 such as Costco and Shop-Rite, where Defendant's tuna products are sold, but will be  
19 unable to rely upon the dolphin-safe representations and will not be able to determine  
20 if Defendant's products are dolphin-safe when deciding whether to purchase the tuna  
21 products in the future.

22           94. Plaintiff Amar Mody resides in Jersey City, New Jersey, and is a citizen  
23 of New Jersey. Throughout the relevant period, Plaintiff Amar Mody routinely was  
24 exposed to, saw, and relied upon Defendant's dolphin-safe representations by  
25 viewing the dolphin-safe mark on the Chicken of the Sea tuna products, including  
26 canned tuna in water, at various stores in Jersey City, New Jersey, including Shop  
27 Rite and ACME. Plaintiff Amar Mody purchased the tuna products many times  
28

1 throughout the relevant period. At all relevant times, Plaintiff Amar Mody believed  
2 the tuna products were dolphin-safe and was unaware that the tuna was not dolphin-  
3 safe as represented and was caught using fishing methods that are harmful to  
4 dolphins. Had Plaintiff Amar Mody known the tuna was not dolphin-safe and/or had  
5 Defendant not represented that the tuna was dolphin-safe, Plaintiff Amar Mody  
6 would not have purchased the Chicken of the Sea tuna products. As a result, Plaintiff  
7 Amar Mody suffered injury in fact and lost money at the time of purchase. Plaintiff  
8 Amar Mody continues to desire to purchase Chicken of the Sea tuna products that  
9 are dolphin-safe, and he would purchase such a product manufactured by Defendant  
10 if it were possible to determine prior to purchase whether dolphins were harmed by  
11 Defendant's operations. Indeed, Plaintiff Amar Mody regularly visits stores such as  
12 Shop Rite and ACME, where Defendant's tuna products are sold, but will be unable  
13 to rely upon the dolphin-safe representations and will not be able to determine if  
14 Defendant's products are dolphin-safe when deciding whether to purchase the tuna  
15 products in the future.

16 95. Plaintiff Heena Mody resides in Jersey City, New Jersey, and is a citizen  
17 of New Jersey. Throughout the relevant period, Plaintiff Heena Mody routinely was  
18 exposed to, saw, and relied upon Defendant's dolphin-safe representations by  
19 viewing the dolphin-safe mark on the Chicken of the Sea tuna products, including  
20 canned tuna in water, at various stores in Jersey City, New Jersey, including Shop  
21 Rite and ACME. Plaintiff Heena Mody purchased the tuna products many times  
22 throughout the relevant period. At all relevant times, Plaintiff Heena Mody believed  
23 the tuna products were dolphin-safe and was unaware that the tuna was not dolphin-  
24 safe as represented and was caught using fishing methods that are harmful to  
25 dolphins. Had Plaintiff Heena Mody known the tuna was not dolphin-safe and/or  
26 had Defendant not represented that the tuna was dolphin-safe, Plaintiff Heena Mody  
27 would not have purchased the Chicken of the Sea tuna products. As a result, Plaintiff



1 Heena Mody suffered injury in fact and lost money at the time of purchase. Plaintiff  
2 Heena Mody continues to desire to purchase Chicken of the Sea tuna products that  
3 are dolphin-safe, and she would purchase such a product manufactured by Defendant  
4 if it were possible to determine prior to purchase whether dolphins were harmed by  
5 Defendant's practices. Indeed, Plaintiff Heena Mody regularly visits stores such as  
6 Shop Rite and ACME, where Defendant's tuna products are sold, but will be unable  
7 to rely upon the dolphin-safe representations and will not be able to determine if  
8 Defendant's products are dolphin-safe when deciding whether to purchase the tuna  
9 products in the future.

10 96. Plaintiff Megan Kiihne resides in Winona, Minnesota and is a citizen of  
11 Minnesota. Throughout the relevant period, Plaintiff Kiihne routinely was exposed  
12 to, saw, and relied upon Defendant's dolphin-safe representations by viewing the  
13 dolphin-safe mark on the Chicken of the Sea canned tuna in water and tuna in  
14 pouches at various stores in Winona, Minnesota, including Walmart and Midtown  
15 Foods. Plaintiff Kiihne purchased the tuna products many times throughout the  
16 relevant period. At all relevant times, Plaintiff Kiihne believed the tuna products  
17 were dolphin-safe and was unaware that the tuna was not dolphin-safe as represented  
18 and was caught using fishing methods that are harmful to dolphins. Had Plaintiff  
19 Kiihne known the tuna was not dolphin-safe and/or had Defendant not represented  
20 that the tuna was dolphin-safe, Plaintiff Kiihne would not have purchased the  
21 Chicken of the Sea tuna products. As a result, Plaintiff Kiihne suffered injury in fact  
22 and lost money at the time of purchase. Plaintiff Kiihne continues to desire to  
23 purchase Chicken of the Sea tuna products that are dolphin-safe, and she would  
24 purchase such a product manufactured by Defendant if it were possible to determine  
25 prior to purchase whether dolphins were harmed by Defendant's operations. Indeed,  
26 Plaintiff Kiihne regularly visits stores such as Walmart and Midtown Foods, where  
27 Defendant's tuna products are sold, but will be unable to rely upon the dolphin-safe

1 representations and will not be able to determine if Defendant's products are dolphin-  
2 safe when deciding whether to purchase the tuna products in the future.

3 97. Defendant Tri-Union Seafoods LLC, dba Chicken of the Sea  
4 International, Inc., is a limited liability company organized, existing, and doing  
5 business under the laws of the State of California, with its headquarters and principal  
6 place of business located in San Diego, California, and is a citizen of California.  
7 Chicken of the Sea operates its tuna processing facility in Lyons, Georgia. During  
8 the time period relevant to Plaintiffs' claims, Chicken of the Sea produced and sold  
9 canned tuna and tuna pouches throughout the United States and its territories; sold  
10 canned tuna and tuna pouches to Plaintiffs and others in the United States; and  
11 engaged in the false, misleading, and deceptive advertising alleged in this Complaint.

## 12 CLASS DEFINITION AND ALLEGATIONS

13 98. Plaintiffs bring this action on behalf of themselves and all other  
14 similarly situated consumers pursuant to Rules 23(a), (b)(2), (b)(3), and (c)(4) of the  
15 Federal Rules of Civil Procedure and seek certification of the following Classes:<sup>9</sup>

### 16 Nationwide Class

17 All consumers who, within the applicable statute of  
18 limitations period until the date notice is disseminated,  
19 purchased the tuna products in the United States.

20 Excluded from this Class are Defendant and its officers,  
21 directors, employees and those who purchased the tuna  
22 products for the purpose of resale.

23 99. Alternatively, Plaintiffs Duggan and Myers seek certification of the  
24 following California-Only Class:

### 25 California-Only Class

26 All California consumers who within the applicable statute  
27 of limitations period until the date notice is disseminated,  
28 purchased the tuna products.

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29 <sup>9</sup> For ease of reference, the Nationwide Class and state-only classes alleged herein  
30 may sometimes be referred to as the "Class" or the "Classes."

1 Excluded from this Class are Defendant and its officers,  
2 directors and employees, and those who purchased the tuna  
products for the purpose of resale.

3 100. In addition, Plaintiff Cosgrove seeks certification of the following  
4 Florida-Only Class:

5 **Florida-Only Class**

6 All Florida consumers who within the applicable statute of  
limitations period until the date notice is disseminated,  
7 purchased the tuna products.

8 Excluded from this Class are Defendant and its officers,  
9 directors and employees, and those who purchased the tuna  
products for the purpose of resale.

10 101. In addition, Plaintiffs Robert and Colleen McQuade, Plaintiffs Anthony  
11 and Lori Luciano, Plaintiffs Fidel and Jocelyn Jamelo, and Plaintiffs Borruso and  
12 Nugent seek certification of the following New York-Only Class:

13 **New York-Only Class**

14 All New York consumers who within the applicable statute  
of limitations period until the date notice is disseminated,  
15 purchased the tuna products.

16 Excluded from this Class are Defendant and its officers,  
17 directors and employees, and those who purchased the tuna  
products for the purpose of resale.

18 102. In addition, Plaintiffs Amar and Heena Mody and Plaintiffs Zelig and  
19 Petrovcik seek certification of the following New Jersey-Only Class:

20 **New Jersey-Only Class**

21 All New Jersey consumers who within the applicable statute  
of limitations period until the date notice is disseminated,  
22 purchased the tuna products.

23 Excluded from this Class are Defendant and its officers,  
24 directors and employees, and those who purchased the tuna  
products for the purpose of resale.

25 //  
26 //  
27 //  
28 //

1           103. In addition, Plaintiff Kiihne seeks certification of the following  
2 Minnesota-Only Class:

3                   **Minnesota-Only Class**

4                   All Minnesota consumers who within the applicable statute  
5 of limitations period until the date notice is disseminated,  
6 purchased the tuna products.

7                   Excluded from this Class are Defendant and its officers,  
8 directors and employees, and those who purchased the tuna  
9 products for the purpose of resale.

10           104. **Numerosity.** The members of the Classes are so numerous that their  
11 joinder is impracticable. Plaintiffs are informed and believe that the proposed  
12 Classes contain thousands of purchasers of the tuna products who have been damaged  
13 by Defendant's conduct as alleged herein. The precise number of Class members is  
14 unknown to Plaintiffs.

15           105. **Existence and Predominance of Common Questions of Law and**  
16 **Fact.** This action involves common questions of law and fact, which predominate  
17 over any questions affecting individual Class members. These common legal and  
18 factual questions include, but are not limited to, the following:

- 19                   a. whether Defendant's dolphin-safe representations are false,  
20 misleading, or objectively reasonably likely to deceive;
- 21                   b. whether Defendant failed to comply with traceability and  
22 verification requirements;
- 23                   c. whether Defendant engaged in fishing practices that harmed  
24 dolphins;
- 25                   d. whether Defendant's alleged conduct is unlawful;
- 26                   e. whether the alleged conduct constitutes violations of the laws  
27 asserted, including whether Defendant violated RICO, 18 U.S.C. §1962;
- 28                   f. whether Defendant engaged in false, misleading and/or deceptive  
advertising;

1           g.     whether the Dolphin-Unsafe RICO Enterprise was an enterprise  
2 engaged in, or the activities of which affected, interstate or foreign commerce;

3           h.     whether Defendant and its RICO Co-Conspirators conducted or  
4 participated in the conduct of the Dolphin-Unsafe RICO Enterprise's affairs through  
5 a pattern of racketeering activities;

6           i.     whether Defendant and its RICO Co-Conspirators knowingly  
7 participated in, devised, or intended to devise a scheme or plan to defraud, or a  
8 scheme or plan for obtaining money or property by means of false or fraudulent  
9 pretenses, representations, promises, or omissions;

10          j.     whether the statements made or facts omitted as part of the  
11 scheme were material; that is, whether they had a natural tendency to influence, or  
12 were capable of influencing, a person to part with money or property;

13          k.     whether Defendant and its RICO Co-Conspirators used, or caused  
14 to be used, the mails or interstate wire transmission to carry out, or attempt to carry  
15 out, an essential part of the scheme;

16          l.     what is the measure and amount of damages suffered by Plaintiffs  
17 and Class Members, and whether Plaintiffs and the Class are entitled to treble and/or  
18 punitive damages; and

19          m.     whether Plaintiffs and Class members are entitled to appropriate  
20 equitable remedies, including damages, restitution, corrective advertising, and  
21 injunctive relief.

22        106. **Typicality.** Plaintiffs' claims are typical of the claims of the members  
23 of the Classes because, *inter alia*, all Class members were injured through the  
24 uniform misconduct described above. Plaintiffs are also advancing the same claims  
25 and legal theories on behalf of themselves and all Class members.

26        107. **Adequacy of Representation.** Plaintiffs will fairly and adequately  
27 protect the interests of Class members. Plaintiffs have retained counsel experienced  
28

1 in complex consumer class action litigation, and Plaintiffs intend to prosecute this  
2 action vigorously. Plaintiffs have no adverse or antagonistic interests to those of the  
3 Classes.

4       108. **Superiority.** A class action is superior to all other available means for  
5 the fair and efficient adjudication of this controversy. The damages or other financial  
6 detriment suffered by individual Class members is relatively small compared to the  
7 burden and expense that would be entailed by individual litigation of their claims  
8 against Defendant. It would thus be virtually impossible for members of the Classes,  
9 on an individual basis, to obtain effective redress for the wrongs done to them.  
10 Furthermore, even if Class members could afford such individualized litigation, the  
11 court system could not. Individualized litigation would create the danger of  
12 inconsistent or contradictory judgments arising from the same set of facts.  
13 Individualized litigation would also increase the delay and expense to all parties and  
14 the court system from the issues raised by this action. By contrast, the class action  
15 device provides the benefits of adjudication of these issues in a single proceeding,  
16 economies of scale, and comprehensive supervision by a single court, and presents  
17 no unusual management difficulties under the circumstances here.

18       109. Plaintiffs seek preliminary and permanent injunctive and equitable relief  
19 on behalf of the entire Classes, on grounds generally applicable to the entire Classes,  
20 to enjoin and prevent Defendant from engaging in the acts described and requiring  
21 Defendant to provide full restitution to Plaintiff and Class members.

22       110. Unless a Class is certified, Defendant will retain monies received as a  
23 result of its conduct that were taken from Plaintiffs and Class members.

24       111. Unless an injunction is issued, Defendant will continue to commit the  
25 violations alleged, and the members of the Classes and the general public will  
26 continue to be deceived and not know whether the dolphin-safe representations  
27 and/or sustainable fishing methods representations are true or if the tuna products

1 continue to contain tuna caught using fishing methods that are harmful to dolphins.

2 112. Likewise, particular issues under Rule 23(c)(4) are appropriate for  
 3 certification because such claims present only particular, common issues, the  
 4 resolution of which would advance the disposition of this matter and the parties'  
 5 interests therein. Such particular issues include, but are not limited to: (a) whether  
 6 Defendant marketed and sold its tuna products as “Dolphin Safe” and sustainably  
 7 sourced when they were not; (b) whether Defendant conspired with its RICO Co-  
 8 Conspirators to violate RICO; (c) whether Defendant’s conduct was unlawful, unfair,  
 9 or fraudulent in violation of state consumer protections law; (d) whether Defendant’s  
 10 misrepresentations would deceive a reasonable consumer; (e) whether Defendant has  
 11 been unjustly enriched; (f) whether Defendant failed to comply with federal law in  
 12 branding its tuna products “Dolphin Safe”; and (g) whether Defendant’s  
 13 misrepresentations regarding its tuna products would be material to a reasonable  
 14 consumer.

15 **COUNT I**  
**Violation of Racketeer Influenced and Corrupt Organizations Act (“RICO”) –**  
**18 U.S.C. §§1962(c)-(d)**  
**(On Behalf of the Nationwide Class)**

17 113. Plaintiffs repeat and re-allege the allegations contained in the  
 18 paragraphs above, as if fully set forth herein.

19 114. Plaintiffs bring this claim against Defendant individually and on behalf  
 20 of the Nationwide Class.

21 115. Defendant conducts its business—legitimate and illegitimate—in  
 22 concert with numerous other persons and entities, including, but not limited to,  
 23 Defendant’s parent company, Thai Union Group PLC (“Thai Union”), a Thailand-  
 24 based seafood-based food products conglomerate; Tunago Pacific Longline Tuna  
 25 Fishery (“Tunago”), a Taiwanese company whose fishing vessel fleet is flagged to  
 26 Vanuatu in the South Pacific, that sources much of Defendant’s tuna products; FCF  
 27



1 Fishery Company, Ltd. (“FCF”), another fishing vessel operator for Defendant; Tri-  
2 Union Frozen Products, Inc. (“TUFP”), one of Defendant’s top importers and  
3 distributors; Chicken Of The Sea International (“COSI”), another of Defendant’s top  
4 importers; Tri Marine International, Inc. (“Tri Marine”), a U.S.-based tuna fishing,  
5 processing, and trading company; Samoa Packing Co. (“Samoa Packing”), an  
6 American Samoa-based importing and packing company for Defendant; and various  
7 other fishing, import/export, packaging, labeling, and distributing companies  
8 (collectively, the “RICO Co-Conspirators”).

9 116. At all relevant times, Defendant and its RICO Co-Conspirators have  
10 each been a “person” under 18 U.S.C. §1961(3) because each was capable of holding  
11 “a legal or beneficial interest in property.”

12 117. Section 1962(c) of RICO makes it “unlawful for any person employed  
13 by or associated with any enterprise engaged in, or the activities of which affect,  
14 interstate or foreign commerce, to conduct or participate, directly or indirectly, in the  
15 conduct of such enterprise’s affairs through a pattern of racketeering activity.” 18  
16 U.S.C. §1962(c).

17 118. Section 1962(d) of RICO makes it unlawful for “any person to conspire  
18 to violate” section 1962(c), among other provisions. *See* 18 U.S.C. §1962(d).

19 119. As part of a strategy to save millions if not billions of dollars and  
20 convince consumers to purchase its tuna products, Defendant and its RICO Co-  
21 Conspirators concocted a scheme at or before 2000 and continuing throughout the  
22 Class Period, to falsely represent, in various pieces of mail, through wires, and on the  
23 Internet, that Defendant’s tuna products were dolphin-safe under U.S. law and  
24 regulations, including the MMPA as amended, 16 U.S.C. §1361, *et seq.*, the DPCIA,  
25 16 U.S.C. §1385, *et seq.*, and 50 CFR §216.95. In making this express representation,  
26 Defendant falsely assured the public and regulators that “no” dolphins were killed or  
27 seriously injured, that Defendant adequately traces or otherwise identifies its tuna

1 that is not dolphin-safe, and that Defendant physically segregates and stores tuna that  
2 is not dolphin-safe separately from any tuna that may be dolphin-safe.

3 120. Defendant and its RICO Co-Conspirators' scheme is similar to that of  
4 Volkswagen, General Motors, Fiat Chrysler, and other automobile manufacturers and  
5 parts suppliers who brazenly violated federal and state emissions laws and  
6 regulations, concomitantly deceiving consumers, car dealers, and regulatory bodies  
7 alike, by marketing and labeling their vehicles as "clean" and "eco" friendly when,  
8 in fact, the vehicles contained undisclosed emission control devices that served to  
9 "defeat" emissions testing under the Clean Air Act, and actually significantly  
10 increased NOx emissions when activated. RICO allegations against these companies  
11 have repeatedly been upheld by the federal judiciary. *See, e.g., Bledsoe v. FCA US*  
12 *LLC*, No. 16-14024, 2019 WL 1379588, at \*16 (E.D. Mich. Mar. 27, 2019); *In re*  
13 *Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Practices, & Prod. Liab. Litig.*, 295 F.  
14 Supp. 3d 927, 984 (N.D. Cal. 2018); *In re Duramax Diesel Litig.*, 298 F. Supp. 3d  
15 1037, 1087 (E.D. Mich. 2018); *In re Volkswagen "Clean Diesel" Mktg., Sales*  
16 *Practices, & Prod. Liab. Litig.*, No. MDL 2672 CRB (JSC), 2017 WL 4890594, at  
17 \*18 (N.D. Cal. Oct. 30, 2017).

18 121. As alleged in detail above, once the consuming public became aware in  
19 the late 1980s that large numbers of dolphins were being indiscriminately killed by  
20 tuna fishermen, public outcry and demand for more responsible fishing practices was  
21 intense and continues to this day.

22 122. Along with other canned tuna companies, Defendant began promising  
23 consumers that the tuna it sold would **only** be procured through dolphin-safe fishing  
24 practices. Defendant thereafter implemented a widespread and long-term marketing  
25 campaign that continues to this day – expressly representing to consumers its  
26 commitment to sustainably sourcing tuna and that no dolphins are killed or harmed  
27 in capturing its tuna and that it is in compliance with federal laws and regulations

1 regarding the use of a special “Dolphin Safe” logo on its tuna products. Chicken of  
2 the Sea, Sustainability Report 2012 at 4, *available at*  
3 [https://chickenofthesea.com/uploads/pdf/COSI\\_2014\\_Sustainability\\_Report.pdf](https://chickenofthesea.com/uploads/pdf/COSI_2014_Sustainability_Report.pdf)  
4 (“highly engaged with consumers” through Facebook, Twitter, online newsletter, and  
5 24/7 hotline).

6 123. However, Defendant was either unable or unwilling to conduct its tuna  
7 fishing activities within the constraints of the law, and so it devised a scheme outside  
8 of it. Instead of spending money on more expensive tuna fishing, tracing and  
9 segregation operations as the laws required to label tuna as dolphin-safe (or simply  
10 coming clean removing their dolphin-safe logo and retracting their dolphin-safe  
11 promises), Defendant and its RICO Co-Conspirators agreed to continue using more  
12 cost-saving, unsustainable tuna fishing methods that kill and otherwise harm  
13 dolphins.

14 124. These methods were concealed from, among other persons and entities:  
15 consumers throughout the United States, including California (on Defendant’s tuna  
16 product packaging, labeling, and the Internet); port authorities where Defendant’s  
17 tuna is off-loaded and processed; the U.S. National Oceanic and Atmospheric  
18 Administration (“NOAA”) in, among other things, NOAA’s Form 370<sup>10</sup> and Captain  
19 Statements,<sup>11</sup> both part of NOAA’s “Fisheries’ Tuna Tracking and Verification  
20 Program;” and other tracing and tracking reports.

21 125. To accomplish their scheme or common course of conduct, Defendant  
22 and its RICO Co-Conspirators, along with others, had to work together to conceal the  
23 truth. Each of them was employed by, hired by, or associated with, and conducted  
24 or participated in the affairs of, a RICO enterprise (defined below and referred to as

25  
26 <sup>10</sup> <https://www.fisheries.noaa.gov/national/marine-mammal-protection/noaa-form-370-fisheries-certificate-origin> (last visited May 2, 2019).

27 <sup>11</sup> <https://www.fisheries.noaa.gov/national/marine-mammal-protection/captains-statement-templates> (last visited May 2, 2019).

1 the “Dolphin-Unsafe RICO Enterprise” or the “Enterprise”). The purpose of the  
2 Dolphin-Unsafe RICO Enterprise was to deceive regulators, retailers, and consumers  
3 into believing that Defendant’s tuna products were sustainably sourced and “Dolphin  
4 Safe” as that term is defined by U.S. laws and regulations. The motivation was  
5 simple: to increase Defendant’s revenue by promising consumers its tuna products  
6 were dolphin-safe, while also minimizing its costs by not adopting more expensive  
7 tuna fishing, tracing, and segregation operations that would comply with the law. As  
8 a direct and proximate result of their fraudulent scheme and common course of  
9 conduct, Defendant and its RICO Co-Conspirators were able to extract billions of  
10 dollars from consumers. As explained below, their years-long misconduct violated  
11 Sections 1962(c) and (d).

12 **A. Description of the Dolphin-Unsafe RICO Enterprise**

13 126. Defendant, which controls over one-third of the shelf-stable tuna market  
14 in the U.S., is owned and controlled by Thai Union, a Thailand-based seafood  
15 conglomerate. Chicken of the Sea, Sustainability Report 2012 at 3, *available at*  
16 [https://chickenofthesea.com/uploads/pdf/COSI\\_2014\\_Sustainability\\_Report.pdf](https://chickenofthesea.com/uploads/pdf/COSI_2014_Sustainability_Report.pdf)  
17 (last visited May 22, 2019) (“In 2012, we began to coordinate sustainability efforts  
18 with Thai Union both in our respective operations and on issues stretching across the  
19 supply chain.”); *Id.* at 3 (Defendant provides quarterly reports to Thai Union).  
20 Defendant uses the fishing vessels of Thai Union’s subsidiaries’, Tunago, FCF, and  
21 other companies’ currently unknown to Plaintiffs, as well as those companies’  
22 fishermen, to catch and procure tuna for use in Defendant’s tuna products. Defendant  
23 uses, among others, TUFPP and COSI to import its tuna into the United States,  
24 including into California. Defendant uses, among others, Tri Marine and Samoa  
25 Packing to store and package its tuna products. Defendant uses a network of  
26 distributors to deploy its tuna products throughout the United States for sale to  
27 consumers. Throughout this process, Defendant and its RICO Co-Conspirators sent

1 through the mails and wires, among other things, consumer tuna products with  
2 product labels, Internet website postings, invoices, wire payment records, shipping  
3 manifests, bills of lading, NOAA Form 370s, Captain Statements, and tracing and  
4 tracking reports which all identified the tuna being sold as dolphin safe, when it was  
5 not.

6 127. At all relevant times, Defendant and its RICO Co-Conspirators, along  
7 with other individuals and entities, including unknown third parties involved in the  
8 procuring, processing, exporting, importing, labeling, packaging, distributing, and  
9 sale of Defendant's tuna products, operated an association-in-fact enterprise, which  
10 was formed for the purpose of fraudulently marketing, advertising, and labeling  
11 Defendant's tuna products as "Dolphin Safe" and sustainably sourced and deceiving  
12 consumers and retailers, as well as federal regulators at the Department of Commerce  
13 and NOAA, in order to sell Defendant's tuna products throughout the United States  
14 (and California), and through which enterprise they conducted a pattern of  
15 racketeering activity under 18 U.S.C. §1961(4).

16 128. At all relevant times, the Dolphin-Unsafe RICO Enterprise constituted  
17 a single "enterprise" or multiple enterprises within the meaning of 18 U.S.C.  
18 §1961(4), as legal entities, as well as individuals and legal entities associated-in-fact  
19 for the common purpose of engaging in Defendant's and the RICO Co-Conspirators'  
20 unlawful profit-making scheme.

21 129. The association-in-fact Dolphin-Unsafe RICO Enterprise consisted of  
22 at least the following entities and individuals, and likely others:

23 **1. Chicken of the Sea**

24 130. Chicken of the Sea, the Defendant in this action, is the third largest seller  
25 of shelf-stable tuna products in the United States. Chicken of the Sea is wholly  
26 owned by Thai Union of Thailand. Chicken of the Sea is run by Wing Chan Shue  
27 who previously served as CFO of TUFP, one of Thai Union's subsidiaries. Chicken  
28

1 of the Sea is a distinct legal entity, controlled and owned by Thai Union. As more  
2 fully detailed herein, Chicken of the Sea conspired with Thai Union, Tunago, FCF,  
3 TUFP, COSI, Samoa Packing, Tri Marine, and other entities and individuals to  
4 procure, process, package, label, and sell tuna products as dolphin-safe and  
5 sustainably sourced when they are not, to package and label Defendant's tuna  
6 products with false and material misrepresentations, and to gather information for  
7 submission to port authorities and regulators in the Form 370s and Captain  
8 Statements. According to Chicken of the Sea's 2012 Sustainability Report, it  
9 provides quarterly reports to Thai Union and coordinates sustainability efforts with  
10 Thai Union in respective operations and on issues across the supply chain. Chicken  
11 of the Sea knew or recklessly disregarded that its tuna products sold to Plaintiffs and  
12 the Class did not comply with U.S. laws and regulations for labeling the products  
13 dolphin-safe and yet concealed this information from consumers, retailers, and  
14 regulators.

15 131. Working with other members of the Dolphin-Unsafe RICO Enterprise,  
16 Chicken of the Sea conspired to procure, process, package, label, and sell tuna  
17 products that are not dolphin-safe to illegally circumvent stringent U.S. laws and  
18 regulations. Employing these illegal practices, Chicken of the Sea fraudulently told  
19 consumers that its tuna products were "Dolphin Safe" and "sourced responsibly," and  
20 submitted false dolphin safe statements to port authorities, the U.S. Department of  
21 Commerce (including NOAA), and in written and online marketing and advertising  
22 for Chicken of the Sea's tuna products.

## 23 2. The Co-Conspirator Fishing Vessel Entities and Individuals

24 132. As explained above, RICO Co-Conspirators Thai Union, Tunago, FCF,  
25 and their shipping companies and fishermen, among other third-party fishing vessel  
26 companies and employees unknown to Plaintiffs, supplied tuna to Defendant for  
27 processing and sale that is not dolphin safe or sustainably sourced, knowing that

1 Defendant would package, label, market, and sell its tuna products to Plaintiffs and  
2 the Class as dolphin-safe, sustainably sourced, and compliant with federal laws and  
3 regulations. On information and belief, these RICO Co-Conspirators further supplied  
4 false Captain Statements to Defendant knowing that such Captain Statements were  
5 false and, if the truth were known, Defendant would not be able to package, label,  
6 market, and sell its tuna products to the Class as dolphin-safe, sustainably sourced,  
7 and compliant with federal laws and regulations.

8 133. RICO Co-Conspirators Thai Union, Tunago, FCF, and their shipping  
9 companies and fishermen, among other third-party fishing vessel companies and  
10 employees unknown to Plaintiffs, were key to the conspiracy with Defendant  
11 enabling Defendant to sell its tuna to consumers as dolphin-safe and sustainably  
12 sourced.

13 134. RICO Co-Conspirators Thai Union, Tunago, FCF, and their shipping  
14 companies and fishermen, among other third-party fishing vessel companies and  
15 employees unknown to Plaintiffs, worked with Defendant to design and implement  
16 the scheme by using cheaper and more efficient tuna fishing techniques they knew  
17 would result in the killing and harming of dolphins and render false Defendant's  
18 dolphin-safe and sustainably sourced representations to consumers and retailers in  
19 the United States, and by submitting false Captain Statements and other documents  
20 to Defendant they knew would be relied upon to permit Defendant to import, process  
21 and sell its tuna as dolphin-safe and sustainably sourced.

22 135. Put simply, RICO Co-Conspirators Thai Union, Tunago, FCF, and their  
23 shipping companies and fishermen, among other third-party fishing vessel companies  
24 and employees unknown to Plaintiffs, were well aware that the tuna they procured  
25 on their fishing vessels for Defendant would be used to defraud consumers, retailers,  
26 and federal regulators. Indeed, these companies and individuals were critical to the  
27



1 concealment of the truth from consumers, retailers, and federal regulators regarding  
2 Defendant's tuna products.

3 **3. The Co-Conspirator Importers and Individuals**

4 136. RICO Co-Conspirators TUFPP and COSI, and their employees, among  
5 other third-party importers and employees unknown to Plaintiffs, imported  
6 Defendant's tuna products for sale, knowing that Defendant would market and sell  
7 its tuna products to Plaintiffs and the Class as dolphin-safe, sustainably sourced, and  
8 compliant with federal laws and regulations. On information and belief, these RICO  
9 Co-Conspirators further supplied false bills of lading in connection with the  
10 importation of the tuna products into the United States knowing that such bills of  
11 lading were false and, if the truth were known, Defendant would not be able to  
12 package, label, market, and sell its tuna products to the Class as dolphin-safe,  
13 sustainably sourced, and compliant with federal laws and regulations.

14 137. RICO Co-Conspirators TUFPP and COSI, and their employees, among  
15 other third-party fishing importers and employees unknown to Plaintiffs, were key to  
16 the conspiracy with Defendant enabling Defendant to sell its tuna to consumers as  
17 dolphin-safe and sustainably sourced.

18 138. RICO Co-Conspirators TUFPP and COSI, and their employees, among  
19 other third-party importers and employees unknown to Plaintiffs, worked with  
20 Defendant to design and implement the scheme by importing tuna that was neither  
21 dolphin-safe nor sustainably caught which they knew would render false Defendant's  
22 dolphin-safe and sustainability representations to consumers and retailers in the  
23 United States, and by submitting false bills of lading and other documents to port  
24 authorities and regulators they knew would be relied upon to permit Defendant to  
25 import, process and sell its tuna as dolphin-safe and sustainably sourced.

26 139. Put simply, RICO Co-Conspirators TUFPP and COSI, and their  
27 employees, among other third-party importers and employees unknown to Plaintiffs,

1 were well aware that the tuna they imported for Defendant into the United States  
2 would be used to defraud consumers, retailers, and federal regulators. Indeed, these  
3 companies and individuals were critical to the concealment of the truth from  
4 consumers, retailers, and federal regulators regarding Defendant's tuna products.

5  
6 **4. The Co-Conspirator Storage, Canning, and Processing  
Entities and Individuals**

7 140. RICO Co-Conspirators Tri Marine and Samoa Packing, and their  
8 employees, among other third-party storage, canning, and processing companies and  
9 employees unknown to Plaintiffs, stored, canned, and processed Defendant's tuna  
10 products for sale, knowing that Defendant would market and sell its tuna products to  
11 Plaintiffs and the Class as dolphin-safe, sustainably sourced, and compliant with  
12 federal laws and regulations.

13 141. RICO Co-Conspirators Tri Marine and Samoa Packing, and their  
14 employees, among other third-party storage, canning, and processing companies and  
15 employees unknown to Plaintiffs, were key to the conspiracy with Defendant  
16 enabling Defendant to sell its tuna to consumers as dolphin-safe and sustainably  
17 sourced.

18 142. RICO Co-Conspirators Tri Marine and Samoa Packing, and their  
19 employees, among other third-party storage, canning, and processing companies and  
20 employees unknown to Plaintiffs, worked with Defendant to design and implement  
21 the scheme by storing, canning, and processing tuna that was neither dolphin-safe  
22 nor sustainably caught which they knew would render false Defendant's dolphin-safe  
23 and sustainability representations to consumers and retailers in the United States.

24 143. Put simply, RICO Co-Conspirators Tri Marine and Samoa Packing, and  
25 their employees, among other third-party storage, canning, and processing companies  
26 and employees unknown to Plaintiffs, were well aware that the tuna they stored,  
27

1 processed, and canned for Defendant prior to importing it into the United States  
2 would be used to defraud consumers, retailers, and federal regulators. Indeed, these  
3 companies and individuals were critical to the concealment of the truth from  
4 consumers, retailers, and federal regulators regarding Defendant's tuna products.

5  
6 **B. The Dolphin-Unsafe RICO Enterprise Sought to Increase  
Defendant's Profits and Revenues, as well as Their Own**

7 144. As alleged in detail above, tuna-fishing techniques that meet the  
8 "dolphin-safe" standards (not used by Defendant and its RICO Co-Conspirators) are  
9 more expensive than other techniques. They are more time consuming, require more  
10 manpower, and are less efficient because fish are caught using barbless hooks and  
11 poles one at a time, rather than en masse with longlines or enormous purse seine nets.  
12 Consequently, Defendant and its RICO Co-Conspirators' bottom lines are greatly  
13 increased by the indiscriminate killing and harming of dolphins while fishing for  
14 tuna.

15 145. The Dolphin-Unsafe RICO Enterprise began as early as 2000, when  
16 Thai Union acquired Chicken of the Sea. On information and belief, Defendant has  
17 entered into numerous agreements with Thai Union to procure tuna to be used in  
18 Defendant's tuna products sold to Plaintiffs and the Class, and has entered into  
19 agreements with Tunago, FCF, and other fishing vessel companies unknown to  
20 Plaintiffs to also procure tuna to be used in Defendant's tuna products sold to  
21 Plaintiffs and the Class. Defendant has also entered into numerous agreements with  
22 TUFPP and COSI to import Defendant's tuna products, and with Tri Marine and  
23 Samoa Packing to store, process, and can Defendant's tuna products.

24 146. The scheme continues to this day, as consumers, retailers, and federal  
25 regulators remain in the dark about the truth of Defendant's so-called "Dolphin Safe"  
26 and sustainably sourced tuna products.

1           147. At all relevant times, the Dolphin-Unsafe RICO Enterprise: (a) had an  
2 existence separate and distinct from Defendant and each RICO Co-Conspirator; (b)  
3 was separate and distinct from the pattern of racketeering in which Defendant and  
4 each RICO Co-Conspirator engaged; and (c) was an ongoing and continuing  
5 organization consisting of legal entities, including Defendant, Thai Union, Tunago,  
6 FCF, and their shipping companies and fishermen; TUFPP and COSI and their  
7 employees; Tri Marine and Samoa Packing and their employees; and other entities  
8 and individuals associated for the common purpose of procuring, storing, processing,  
9 importing, packaging, labeling, distributing, marketing, and selling Defendant's tuna  
10 products to consumers in the Class through fraudulent representations in, among  
11 other places, product packaging and labels, Internet websites, marketing and  
12 advertising to consumers, bills of lading, Form 370s, and Captain Statements, and  
13 deriving profits and revenues from those activities. Each member of the Dolphin-  
14 Unsafe RICO Enterprise shared in the bounty generated by the enterprise, *i.e.*, by  
15 sharing the benefit derived from increased sales revenue generated by the scheme to  
16 defraud Class members nationwide.

17           148. The Dolphin-Unsafe RICO Enterprise functioned by selling  
18 Defendant's tuna products to the consuming public. All of these products are  
19 illegitimate. Defendant and its RICO Co-Conspirators, through their illegal  
20 Enterprise, engaged in a pattern of racketeering activity, which involves a fraudulent  
21 scheme to increase revenue for themselves and the other entities and individuals  
22 associated-in-fact with the Enterprise's activities through the illegal scheme to sell  
23 Defendant's falsely-labeled tuna products.

24           149. The Dolphin-Unsafe RICO Enterprise engaged in, and its activities  
25 affected, interstate and foreign commerce, because it involved commercial activities  
26 across state and national boundaries, such as the procuring, importing, storing,  
27

1 processing, packaging, labeling, distributing, marketing, and sale of Defendant's tuna  
2 products throughout the country, and the receipt of monies from the sale of the same.

3 150. Within the Dolphin-Unsafe RICO Enterprise, on information and belief,  
4 there was a common communication network by which co-conspirators shared  
5 information on a regular basis. The Enterprise used this common communication  
6 network for the purpose of procuring, importing, storing, processing, packaging,  
7 labeling, distributing, marketing, and selling Defendant's tuna products to the general  
8 public nationwide.

9 151. Each participant in the Dolphin-Unsafe RICO Enterprise had a  
10 systematic linkage to each other through corporate ties, contractual relationships,  
11 financial ties, and continuing coordination of activities. Through the Dolphin-Unsafe  
12 RICO Enterprise, Defendant and its RICO Co-Conspirators functioned as a  
13 continuing unit with the purpose of furthering the illegal scheme and their common  
14 purposes of increasing their revenues and market share, and minimizing losses.

15 152. Defendant and its RICO Co-Conspirators, including Thai Union,  
16 participated in the operation and management of the Dolphin-Unsafe RICO  
17 Enterprise by directing its affairs, as described herein. While Defendant and its RICO  
18 Co-Conspirators participated in, and are members of, the Enterprise, they have a  
19 separate existence including distinct legal statuses, different offices and roles, bank  
20 accounts, officers, directors, employees, individual personhood, reporting  
21 requirements, and financial statements.

22 153. Defendant exerted substantial control over the Dolphin-Unsafe RICO  
23 Enterprise, and participated in the affairs of the Enterprise, by:

24 a. procuring tuna in a manner that does not permit a company to market  
25 and sell shelf-stable tuna products as "Dolphin Safe" and sustainably sourced;

26 b. concealing that tuna products marketed and sold as "Dolphin Safe" and  
27 sustainably sourced are, in fact, not;

1 c. failing to correct false statements regarding tuna products marketed and  
2 sold as dolphin-safe and sustainably sourced;

3 d. storing, importing, processing, packaging, labeling, distributing,  
4 marketing, and selling Defendant's tuna products with, but may not contain the  
5 "Dolphin Safe" representation;

6 e. misrepresenting (or causing such misrepresentations to be made)  
7 Defendant's tuna products as "Dolphin Safe" and sustainably sourced;

8 f. misrepresenting (or causing such misrepresentations to be made) facts  
9 in bills of lading, Form 370s filed with NOAA, and Captain Statements;

10 g. introducing Defendant's tuna products into the stream of U.S.  
11 commerce with false, deceptive, and misleading representations;

12 h. concealing the truth behind the tuna procured for Defendant's tuna  
13 products from regulators, retailers, and the public;

14 i. misleading government regulators as to the nature of the tuna procured  
15 for Defendant's tuna products;

16 j. misleading the consuming public as to the nature of the tuna procured  
17 for Defendant's tuna products;

18 k. misleading retailers as to the nature of the tuna procured for Defendant's  
19 tuna products;

20 l. designing and distributing marketing materials, product labels, and  
21 websites on the Internet that misrepresented Defendant's tuna products;

22 m. illegally selling and/or distributing Defendant's tuna products;

23 n. collecting revenues and profits from the sale of Defendant's tuna  
24 products; and/or

25 o. ensuring that the RICO Co-Conspirators and unnamed co-conspirators  
26 complied with the scheme or common course of conduct.

1           154. RICO Co-Conspirators Thai Union, Tunago, FCF, and their shipping  
2 companies and fishermen, TUFP and COSI and their employees, and Tri Marine and  
3 Samoa Packing and their employees, among other third parties and employees  
4 unknown to Plaintiffs, also participated in, operated and/or directed the Dolphin-  
5 Unsafe RICO Enterprise. These RICO Co-Conspirators knew that federal laws and  
6 regulations forbade Defendant from importing, storing, packaging, labeling,  
7 marketing, and selling Defendant's tuna products containing tuna they procured and  
8 processed for Defendant as "Dolphin Safe" and sustainably sourced, and yet formed  
9 agreements with Defendant to procure and process tuna for Defendant's tuna  
10 products that was neither dolphin-safe nor sustainably sourced.

11           155. RICO Co-Conspirators Thai Union, Tunago, FCF, and their shipping  
12 companies and fishermen, TUFP and COSI and their employees, and Tri Marine and  
13 Samoa Packing and their employees, among other third parties and employees  
14 unknown to Plaintiffs, directly participated in the fraudulent scheme by procuring,  
15 storing, importing, and processing the tuna used by Defendant in its tuna products.  
16 These RICO Co-Conspirators exercised tight control over the manner and method of  
17 fishing for tuna and other aspects of the procurement, storage, importation, and  
18 distribution process and closely collaborated and cooperated with Defendant in the  
19 process.

20           156. RICO Co-Conspirators Thai Union, Tunago, FCF, and their shipping  
21 companies and fishermen, also participated in the affairs of the Enterprise by working  
22 with Defendant to conceal from U.S. regulators the truth behind the tuna caught for  
23 use in Defendant's tuna products, and collected substantial sums of money in  
24 revenues and profits because they did not use less efficient and more costly fishing  
25 techniques necessary to protect the dolphin and other marine life population. The  
26 techniques they did employ yielded higher catches at lower costs, thus increasing  
27 profits and margins on both accounts. Through their conspiracy to sell unsustainably



1 sourced non-dolphin safe tuna as sustainably sourced and dolphin-safe, all of the co-  
2 conspirators profited handsomely from their scheme.

3 157. Each of the RICO Co-Conspirators knew that the tuna they procured,  
4 stored, canned, processed, imported, and distributed was not sustainably sourced and  
5 did not meet the requirements to be labeled as dolphin-safe, and also knew that the  
6 tuna would eventually be sold in the United States as dolphin-safe and sustainably  
7 sourced.

8 158. Without the RICO Co-Conspirators' willing participation, including  
9 their necessary involvement in procuring, storing, processing, canning, and importing  
10 tuna for use in Defendant's tuna products, the Enterprise's scheme and common  
11 course of conduct would have been unsuccessful.

12 159. The RICO Co-Conspirators knew that any market for tuna products that  
13 were not dolphin-safe was *very* limited, and that falsely representing that these  
14 products were dolphin-safe opened up an exponentially larger market in the United  
15 States for such products.

16 160. The RICO Co-Conspirators directed and controlled several aspects of  
17 the ongoing organization necessary to implement the scheme through  
18 communications with each other, with Defendant, with port authorities, and with  
19 regulators of which Plaintiffs cannot fully know at present, because such information  
20 lies in the Defendant's and others' hands. Similarly, because many of the RICO Co-  
21 Conspirators are foreign entities, and their shipping, storing, processing, and canning  
22 companies and employees are foreign citizens, Plaintiffs cannot fully know the full  
23 extent of each individual corporate entity's and individual's involvement in the  
24 wrongdoing prior to having access to discovery.

25 **C. Mail and Wire Fraud**

26 161. To carry out, or attempt to carry out the scheme to defraud, Defendant  
27 and its RICO Co-Conspirators, each of whom is a person associated-in-fact with the

1 Dolphin-Unsafe RICO Enterprise, did knowingly conduct or participate, directly or  
2 indirectly, in the conduct of the affairs of the Enterprise through a pattern of  
3 racketeering activity within the meaning of 18 U.S.C. §§1961(1), 1961(5) and  
4 1962(c), and which employed the use of the mail and wire facilities, in violation of  
5 18 U.S.C. §1341 (mail fraud) and §1343 (wire fraud).

6 162. Specifically, as alleged herein, Defendant and its RICO Co-  
7 Conspirators have committed and/or conspired to commit at least two predicate acts  
8 of racketeering activity (*i.e.*, violations of 18 U.S.C. §§1341 and 1343), within the  
9 past ten years. The multiple acts of racketeering activity that Defendant and its RICO  
10 Co-Conspirators committed were related to each other, posed a threat of continued  
11 racketeering activity, and therefore constitute a “pattern of racketeering activity.”  
12 The racketeering activity was made possible by Defendant’s and its RICO Co-  
13 Conspirators’ regular use of the facilities, services, distribution channels, and  
14 employees of the Dolphin-Unsafe RICO Enterprise.

15 163. Defendant and its RICO Co-Conspirators participated in the scheme to  
16 defraud by using mail, telephone, and the Internet to transmit mailings and wires in  
17 interstate or foreign commerce. Defendant and its RICO Co-Conspirators used,  
18 directed the use of, and/or caused to be used, thousands of interstate mail and wire  
19 communications in service of their scheme through virtually uniform  
20 misrepresentations.

21 164. In devising and executing the illegal scheme, Defendant and its RICO  
22 Co-Conspirators devised and knowingly carried out a material scheme and/or artifice  
23 to defraud Plaintiffs and the Class or to obtain money from Plaintiffs and the Class  
24 by means of materially false or fraudulent pretenses, representations, or promises of  
25 material facts. For the purpose of executing the illegal scheme, Defendant and its  
26 RICO Co-Conspirators committed these racketeering acts, which number in the  
27

1 thousands, intentionally and knowingly with the specific intent to advance the illegal  
2 scheme.

3 165. Defendant's and its RICO Co-Conspirators' predicate acts of  
4 racketeering (18 U.S.C. §1961(1)) include, but are not limited to:

5 a. **Mail Fraud:** Defendant and its RICO Co-Conspirators violated 18  
6 U.S.C. §1341 by sending or receiving, or by causing to be sent and/or received,  
7 materials via U.S. mail or commercial interstate carriers for the purpose of  
8 executing the unlawful scheme to procure, store, process, can, import, package,  
9 label, distribute, market, and sell Defendant's tuna products by means of false  
10 pretenses, misrepresentations, and promises.

11 b. **Wire Fraud:** Defendant and its RICO Co-Conspirators violated 18  
12 U.S.C. §1343 by transmitting and/or receiving, or by causing to be transmitted  
13 and/or received, materials by wire for the purpose of executing the unlawful  
14 scheme to defraud and obtain money on false pretenses, misrepresentations, and  
15 promises.

16 166. Defendant's and its RICO Co-Conspirators' uses of the mails and wires  
17 include, but are not limited to, the transmission, delivery, or shipment of the  
18 following by Defendant and its RICO Co-Conspirators or third parties that were  
19 foreseeably caused to be sent as a result of Defendant's and its RICO Co-  
20 Conspirators' illegal scheme:

- 21 a. Defendant's tuna products and the tuna itself;
- 22 b. sales and marketing materials, including advertising, websites,  
23 packaging, and labeling, concealing the true nature of Defendant's tuna products;
- 24 c. documents intended to facilitate the packing, labeling, and sale of  
25 Defendant's tuna products, including bills of lading, invoices, shipping records,  
26 reports and correspondence;
- 27

d. documents and communications that facilitated the “passing-off” of Defendant’s tuna products as “Dolphin Safe” and sustainably sourced;

e. documents to process and receive payment for Defendant’s tuna products by unsuspecting Class members, including invoices and receipts;

f. false or misleading Form 370s to NOAA;

g. false or misleading Captain Statements;

h. false or misleading port authority reports;

i. false or misleading tracing and tracking reports;

j. false or misleading communications intended to prevent regulators, retailers, and the public from discovering the true nature of Defendant’s tuna products;

k. payments to Thai Union;

l. payments to Tunago;

m. payments to FCF;

n. payments to TUFP;

o. payments to COSI;

p. payments to Tri Marine;

q. payments to Samoa Packing;

r. compensation to ship captains on tuna fishing vessels;

s. deposits of proceeds; and/or

t. other documents and things, including electronic communications.

167. Defendant and its RICO Co-Conspirators (or their agents), for the purpose of executing the illegal scheme, sent and/or received (or caused to be sent and/or received) by mail or by private or interstate carrier, shipments of Defendant’s tuna products and related documents by mail or a private carrier affecting interstate commerce, including the items described above and alleged below:

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
COSI	Port of New York/Newark	January 22, 2013	Bill of Lading # OOLU2529705470
COSI	Port of New York/Newark	January 6, 2014	Bill of Lading # NYKS3200784000
COSI	Port of Long Beach, CA	July 9, 2013	Bill of Lading # OOLU2535126070

168. Defendant and its RICO Co-Conspirators (or their agents), for the purpose of executing the illegal scheme, transmitted (or caused to be transmitted) in interstate commerce by means of wire communications, certain writings, signs, signals and sounds, including those items described above and alleged below:

<u>From</u>	<u>To</u>	<u>Date</u>	<u>Description</u>
Chicken of the Sea	General Public	2019	Chicken of the Sea FAQs stating that it “remains fully committed to the 100% dolphin-safe policy implemented in April 1990” which “guarantees that Chicken of the Sea will not purchase tuna from vessels that net fish associated with dolphins”
Chicken of the Sea	General Public	2019	Chicken of the Sea webpage titled “Keeping Dolphins Safe”
Chicken of the Sea	General Public	2019	Chicken of the Sea webpage titled “Sustainability” stating that “At Chicken of the Sea, we pride ourselves on our long-standing commitment to operating a socially and environmentally responsible business. We realize that our sustainability obligations don't end when the seafood is caught, but extend all the way through the processing, packaging, and delivery of sustainable seafood to our customers.”
Chicken of the Sea	General Public	2019	Chicken of the Sea webpage titled “Know Your Seafood” stating that “We take great pride in sourcing and catching seafood with a level of integrity that is leagues above. The care we bring to our practices not only contributes to long-term sustainability, it puts only the best seafood

			on your family's table.”
Chicken of the Sea	General Public	2019	Facebook page at <a href="https://www.facebook.com/ChickenoftheSea/">https://www.facebook.com/ChickenoftheSea/</a> stating that Chicken of the Sea tuna was “Certified sustainable”
Chicken of the Sea	General Public	Apr. 24, 2018	Facebook post at <a href="https://www.facebook.com/ChickenoftheSea/photos/a.10150117888942733/10156324855717733/?type=3&amp;theater">https://www.facebook.com/ChickenoftheSea/photos/a.10150117888942733/10156324855717733/?type=3&amp;theater</a> , showing photos of Chicken of the Sea products with “Certified sustainable” logo.
Chicken of the Sea	General Public	Oct. 11, 2016	Facebook post at <a href="https://www.facebook.com/ChickenoftheSea/photos/a.10150117888942733/10154595565122733/?type=3&amp;theater">https://www.facebook.com/ChickenoftheSea/photos/a.10150117888942733/10154595565122733/?type=3&amp;theater</a> , showing photo of can of tuna with “dolphin-safe” logo
Chicken of the Sea	General Public	2019	Posting of Tri-Union Seafoods, LLC’s Sustainability Reports at <a href="https://chickenofthesea.com/company/sustainability">https://chickenofthesea.com/company/sustainability</a>
Chicken of the Sea	General Public	2017-present	Posting of 2017 Sustainability Report at <a href="https://chickenofthesea.com/company/sustainability">https://chickenofthesea.com/company/sustainability</a> , and stating, “Ensuring a healthy supply of seafood for future generations is imperative to both Chicken of the Sea and its consumers. Over the past century, Chicken of the Sea has pioneered responsible sourcing initiatives including the Dolphin-Safe Policy, Shark Finning Ban, and a partnership with the International Seafood Sustainability Foundation.”
Chicken of the Sea	General Public	2016-present	Posting of 2016 Sustainability Report at <a href="https://chickenofthesea.com/company/sustainability">https://chickenofthesea.com/company/sustainability</a> , and stating, “Ensuring a healthy supply of seafood for future generations is imperative to both Chicken of the Sea and its consumers. Over the past century, Chicken of the Sea has pioneered responsible sourcing initiatives including the Dolphin-Safe Policy, Shark Finning Ban, and a partnership with the International Seafood Sustainability Foundation.”
Chicken of	General	2015-	Posting of 2015 Sustainability Report and

the Sea	Public	present	Product Responsibility and Labeling webpage at <a href="http://sustainability.chickenofthesea.com/product-responsibility/product-responsibility-and-labeling">http://sustainability.chickenofthesea.com/product-responsibility/product-responsibility-and-labeling</a> , stating, “We implemented “The Mermaid Cares” dolphin-safe policy in April 1990 and this program placed us among the industry’s leaders in preventing accidental dolphin mortality. All tuna purchased, processed and sold by Chicken of the Sea is dolphin-safe. There is no flexibility in our policy. All the suppliers of our tuna and all suppliers of finished goods must be 100 percent dolphin-safe. None of the tuna we purchase is caught in association with dolphins.”
Chicken of the Sea	General Public	2014 – present	Posting of 2014 Sustainability Report at <a href="https://chickenofthesea.com/company/sustainability">https://chickenofthesea.com/company/sustainability</a> , and stating, “We implemented ‘The Mermaid Cares’ dolphin safe policy in April 1990 and this program placed us among the industry’s leaders in preventing accidental dolphin mortality. All tuna purchased, processed and sold by Chicken of the Sea is dolphin-safe. There is no flexibility in our policy. All the suppliers of our tuna and all suppliers of finished goods must be 100 percent dolphin-safe. None of the tuna we purchase is caught in association with dolphins.”

169. Defendant, in concert with the RICO Co-Conspirators, also used the internet and other electronic facilities to carry out the scheme and conceal their ongoing fraudulent activities. Specifically, Defendant, in concert with the RICO Co-Conspirators, made material misrepresentations about its tuna products on its websites, Facebook, Instagram, Twitter, and through ads online, all of which were made in interstate commerce and intended to mislead regulators and the public about the truth about Defendant’s non-dolphin-safe and unsustainably sourced tuna products.



1           170. Defendant and its RICO Co-Conspirators also communicated by U.S.  
2 mail, by interstate facsimile, and by interstate electronic mail with various other  
3 affiliates, regional offices, divisions, packaging companies, distributors, grocery  
4 chains, wholesale companies, and other third-party entities in furtherance of the  
5 scheme.

6           171. The mail and wire transmissions described herein were made in  
7 furtherance of Defendant's and its RICO Co-Conspirators' scheme and common  
8 course of conduct to deceive regulators, retailers, and consumers and lure retailers  
9 into selling and consumers into purchasing Defendant's tuna products, which  
10 Defendant and its RICO Co-Conspirators knew or recklessly disregarded as not  
11 justifying the "dolphin safe" label, despite their decades-long advertising and  
12 marketing campaign that Defendant's tuna products were "Dolphin Safe" and  
13 sustainably sourced.

14           172. Many of the precise dates of the fraudulent uses of the U.S. mail and  
15 interstate wire facilities have been deliberately hidden, and cannot be alleged without  
16 access to Defendant's and its RICO Co-Conspirators' books and records. However,  
17 Plaintiffs have described the types of, and in some instances, occasions on which the  
18 predicate acts of mail and/or wire fraud occurred. These include thousands of  
19 communications to perpetuate and maintain the scheme, including the things and  
20 documents described in the preceding paragraphs.

21           173. Defendant and its RICO Co-Conspirators have not undertaken the  
22 practices described herein in isolation, but as part of a common scheme and  
23 conspiracy. In violation of 18 U.S.C. §1962(d), Defendant and its RICO Co-  
24 Conspirators conspired to violate 18 U.S.C. §1962(c), as described herein. Various  
25 other persons, firms and corporations, including third-party entities and individuals  
26 not named as defendants in this Complaint, have participated as additional co-  
27 conspirators with Defendant and its RICO Co-Conspirators in these offenses and

1 have performed acts in furtherance of the conspiracy to increase or maintain  
2 revenues, increase market share, and/or minimize losses for Defendant and its RICO  
3 Co-Conspirators and their unnamed additional co-conspirators throughout the illegal  
4 scheme and common course of conduct.

5 174. To achieve their common goals, Defendant and its RICO Co-  
6 Conspirators concealed from the general public the true nature of Defendant's tuna  
7 products and obfuscated the fact that the tuna in Defendant's tuna products was not  
8 dolphin-safe at all or sustainably sourced.

9 175. Defendant and its RICO Co-Conspirators and each member of the  
10 conspiracy, with knowledge and intent, have agreed to the overall objectives of the  
11 conspiracy, and have participated in the common course of conduct, to commit acts  
12 of fraud and indecency in procuring, processing, packaging, labeling, distributing,  
13 marketing, and/or selling Defendant's tuna products.

14 176. Indeed, for the conspiracy to succeed, Defendant and each of its RICO  
15 Co-Conspirators had to agree to each play a role in the conspiracy by implementing  
16 and using similar devices and fraudulent tactics.

17 177. Specifically, Defendant and its RICO Co-Conspirators committed to  
18 secrecy about the truth of Defendant's tuna products not being dolphin-safe or  
19 sustainably sourced and in compliance with federal laws and regulations.

20 178. Defendant and its RICO Co-Conspirators knew and intended that  
21 consumers would purchase Defendant's tuna products and incur costs as a result.  
22 Defendant and its RICO Co-Conspirators also knew and intended that government  
23 regulators would rely on their material misrepresentations made about the tuna in  
24 Defendant's tuna products to approve them for marketing and sale in the United  
25 States and each state. Defendant and its RICO Co-Conspirators also knew and  
26 intended that retailers would rely on their material misrepresentations made about the  
27 tuna in Defendant's products to agree to offer them for sale to the general public.

1        179. Plaintiffs’ and the Class’ reliance on this ongoing concealment is  
2 demonstrated by the fact that they purchased, and lost money or property by  
3 purchasing, falsely advertised tuna products that never should have been introduced  
4 into the U.S. stream of commerce in the manner in which they were. In addition,  
5 NOAA and other regulators relied on the misrepresentations and material  
6 concealment and omissions made or caused to be made by Defendant and its RICO  
7 Co-Conspirators; otherwise, Defendant would never have been able to market, label,  
8 and sell its tuna products as “Dolphin Safe” in the United States and sell the same to  
9 the consuming public.

10        180. As described herein, Defendant and its RICO Co-Conspirators engaged  
11 in a pattern of related and continuous predicate acts for years. The predicate acts  
12 constituted a variety of unlawful activities, each conducted with the common purpose  
13 of obtaining significant monies and revenues from Plaintiffs and Class members  
14 based on their misrepresentations, while providing to Plaintiffs and Class members  
15 Defendant’s tuna products that were worthless, worth significantly less than the  
16 purchase price paid, or that consumers would simply not have purchased at all but  
17 for the conspiracy. The predicate acts also had the same or similar results,  
18 participants, victims, and methods of commission. The predicate acts were related  
19 and not isolated events.

20        181. The predicate acts had the purpose of generating significant revenue and  
21 profits for Defendant and its RICO Co-Conspirators at the expense of Plaintiffs and  
22 Class members. The predicate acts were committed or caused to be committed by  
23 Defendant and its RICO Co-Conspirators through their participation in the Dolphin-  
24 Unsafe RICO Enterprise and in furtherance of its fraudulent scheme, and were  
25 interrelated in that they involved obtaining Plaintiffs’ and Class members’ funds and  
26 avoiding the expenses associated with using fishing methods that permit the capture  
27 of tuna sustainably sourced without harming the dolphin population.

1        182. During the procurement, processing, packaging, labeling, distribution,  
2 marketing, and sale of Defendant's tuna products, Defendant and its RICO Co-  
3 Conspirators shared among themselves logistical, marketing, and financial  
4 information that revealed the existence of the fishing practices employed that prevent  
5 Defendant's tuna products from being marketed and sold as "Dolphin Safe",  
6 sustainably sourced, and in compliance with federal laws and regulations.  
7 Nevertheless, Defendant and its RICO Co-Conspirators chose and agreed to  
8 disseminate information that deliberately misrepresented Defendant's tuna products  
9 as "Dolphin Safe" and sustainably sourced in their concerted efforts to market and  
10 sell them to consumers.

11        183. By reason of, and as a result of the conduct of Defendant and its RICO  
12 Co-Conspirators, and in particular, their pattern of racketeering activity, Plaintiffs  
13 and Class members have been injured in their business and/or property in multiple  
14 ways, including but not limited to:

- 15            a. purchase of falsely advertised tuna products; and
- 16            b. payment at the time of purchase for falsely advertised tuna products  
17 purportedly being "Dolphin Safe," sustainably sourced, and meeting applicable  
18 federal laws and regulations, that were not capable of being sold as "Dolphin  
19 Safe" and sustainably sourced.

20        184. Defendant's and its RICO Co-Conspirators' violations of 18 U.S.C.  
21 §§1962(c) and (d) have directly and proximately caused economic damage to  
22 Plaintiffs' and Class members' business and property, and Plaintiffs and Class  
23 members are entitled to bring this action for three times their actual damages, as well  
24 as injunctive/equitable relief, costs, and reasonable attorneys' fees pursuant to 18  
25 U.S.C. §1964(c).

26 //

27 //

**COUNT II –  
Violation of California Business & Professions Code §§17200, *et seq.*  
(On Behalf of the Nationwide or California-Only Class)**

185. Plaintiffs repeat and re-allege the allegations contained in paragraphs 1-112 above, as if fully set forth herein.

186. Plaintiffs bring this claim individually and on behalf of the Nationwide or California-Only Classes.

187. The Unfair Competition Law, Business & Professions Code §§17200, *et seq.* (“UCL”) prohibits any “unlawful,” “fraudulent,” or “unfair” business act or practice and any false or misleading advertising. More specifically, the UCL provides, in pertinent part: “Unfair competition shall mean and include unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising . . . .”

188. **Unlawful Business Practices:** In the course of conducting business, Defendant committed “unlawful” business practices in violation of the UCL by, *inter alia*, making the dolphin-safe representations and sustainable fishing methods representations, and using the MSC logo, which are false, misleading, and/or deceptive (which also constitute advertising within the meaning of §17200; failing to comply with traceability and verification requirements, as set forth more fully herein; and violating California Civil Code §§1572, 1573, 1709, and 1711; the California Legal Remedies Act, California Civil Code §§1750, *et seq.*; California Business & Professions Code §§17200, *et seq.* and 17500, *et seq.*, and 16 U.S.C. §1385.

189. Plaintiffs reserve the right to allege other violations of law, which constitute other unlawful business acts or practices. Such conduct is ongoing and continues to this date.

190. **Unfair Business Practices:** In the course of conducting business, Defendant committed “unfair” business acts or practices by, *inter alia*, making the

1 dolphin-safe representations and sustainable fishing method representations, and  
2 using the MSC logo, which are false, misleading, and/or deceptive (which also  
3 constitute advertising within the meaning of §17200), and failing to comply with  
4 traceability and verification requirements, as set forth more fully herein. There is no  
5 societal benefit from false advertising, only harm. While Plaintiffs and the public at  
6 large were and continue to be harmed, Defendant has been unjustly enriched by its  
7 false, misleading, and/or deceptive representations as it unfairly enticed Plaintiffs and  
8 Class members to purchase its tuna products instead of similar tuna products sold by  
9 other manufacturers that were dolphin-safe, sustainably caught, stored separately  
10 from non-dolphin-safe tuna, traceable, and verified. Because the utility of  
11 Defendant's conduct (zero) is outweighed by the gravity of harm to Plaintiffs,  
12 consumers, and the competitive market, Defendant's conduct is "unfair" having  
13 offended an established public policy embodied in, among other things, 16 U.S.C.  
14 §1385, where Congress expressly found that it is the policy of the United States to  
15 protect the dolphin population and that "consumers would like to know if the tuna  
16 they purchase is falsely labeled as to the effect of the harvesting of the tuna on  
17 dolphins." 16 U.S.C. §§1385(b)(2)-(3).

18 191. Defendant also engaged in immoral, unethical, oppressive, and  
19 unscrupulous activities that are substantially injurious to the public at large.

20 192. There were reasonably available alternatives to further Defendant's  
21 legitimate business interests, other than the conduct described herein.

22 193. **Fraudulent Business Practices:** In the course of conducting business,  
23 Defendant committed "fraudulent business act[s] or practices" and deceptive or  
24 misleading advertising by, *inter alia*, making the dolphin-safe representations and  
25 sustainable fishing methods representations, and using the MSC logo, which are  
26 false, misleading, and/or deceptive to reasonable consumers, and by failing to comply  
27 with traceability and verification requirements, regarding the tuna products as set  
28

1 forth more fully herein.

2 194. Defendant's actions, claims, and misleading statements, as more fully  
3 set forth above, are misleading and/or likely to deceive the consuming public within  
4 the meaning of Business & Professions Code §17200, *et seq.*

5 195. Plaintiffs relied on Defendant's dolphin-safe representations and  
6 Defendant's compliance with traceability and verification requirements and were in  
7 fact injured as a result of those false, misleading, and deceptive representations and  
8 by Defendant's failure to comply with traceability and verification requirements.

9 196. As alleged herein, Plaintiffs have suffered injury in fact and lost money  
10 or property at the time of purchase as a result of Defendant's conduct because they  
11 were exposed to and purchased Defendant's tuna products in reliance on the dolphin-  
12 safe representations, sustainable fishing methods representations, and Defendant's  
13 compliance with tracing and verification requirements, but did not receive tuna  
14 products that contain tuna caught using fishing methods that do not harm dolphins.

15 197. Unless restrained and enjoined, Defendant will continue to engage in  
16 the above described conduct. Accordingly, injunctive relief is appropriate.

17 198. Plaintiffs, on behalf of themselves, all others similarly situated, and the  
18 general public, seek declaratory relief and an injunction prohibiting Defendant from  
19 continuing such practices, corrective advertising, restitution of all money obtained  
20 from Plaintiffs and the members of the Classes collected as a result of unfair  
21 competition, and all other relief this Court deems appropriate, consistent with  
22 Business & Professions Code §17203.

23 **COUNT III –**  
24 **Violations of the Consumers Legal Remedies Act – Cal. Civ. Code §§ 1750 *et***  
25 **(On Behalf of the California-Only Class)**

26 199. Plaintiffs Duggan and Myers (the "California Plaintiffs") repeat and  
27 incorporate by reference the allegations contained in the paragraphs 1 through 112



1 above as if fully set forth herein.

2 200. The California Plaintiffs bring this claim individually and on behalf of  
3 the California-Only Class.

4 201. This cause of action is brought pursuant to the Consumers Legal  
5 Remedies Act, California Civil Code §§1750, *et seq.* (the “CLRA”).

6 202. The California Plaintiffs are consumers as defined by California Civil  
7 Code § 1761(d). The tuna products are “goods” within the meaning of the CLRA.

8 203. Defendant violated and continues to violate the CLRA by engaging in  
9 the following practices proscribed by California Civil Code §1770(a) in transactions  
10 with the California Plaintiffs and the California-Only Class which were intended to  
11 result in, and did result in, the sale of the tuna products:

12 (5) Representing that [the tuna products have] . . . characteristics, . . .  
13 uses [and] benefits . . . which [they do] not have . . . .

14 \* \* \*

15 (7) Representing that [the tuna products] are of a particular standard,  
16 quality, or grade . . . if they are of another.

17 204. Pursuant to California Civil Code §1782(d), the California Plaintiffs and  
18 the California-Only Class seek a Court Order declaring Defendant to be in violation  
19 of the CLRA, enjoining the above-described wrongful acts and practices of  
20 Defendant, and ordering restitution and disgorgement.

21 205. Pursuant to §1782 of the CLRA, the California Plaintiffs notified  
22 Defendant in writing by certified mail of the particular violations of §1770 of the  
23 CLRA and demanded that Defendant rectify the problems associated with the actions  
24 detailed above and give notice to all affected consumers of Defendant’s intent to so  
25 act.

26 206. Defendant failed to rectify or agree to rectify the problems associated  
27 with the actions detailed above and give notice to all affected consumers within 30  
28

1 days of the date of written notice pursuant to §1782 of the CLRA. Thus, the  
 2 California Plaintiffs further seek actual, punitive, and statutory damages as  
 3 appropriate.

4 **COUNT IV –**  
 5 **Violation of Florida Deceptive and Unfair Trade Practices Act – Fla. Stat.**  
 6 **§§501.201, *et seq.***  
 7 **(On Behalf of the Florida-Only Class)**

8 207. Plaintiff Cosgrove repeats and incorporates by reference the allegations  
 9 contained in the paragraphs 1 through 112 above as if fully set forth herein.

10 208. Plaintiff Cosgrove brings this claim individually and on behalf of the  
 11 Florida-Only Class.

12 209. This cause of action is brought pursuant to the Florida Deceptive and  
 13 Unfair Trade Practices Act, §§501.201, *et seq.*, Fla. Stat. (“FDUTPA”). The stated  
 14 purpose of FDUTPA is to “protect the consuming public . . . from those who engage  
 15 in unfair methods of competition, or unconscionable, deceptive, or unfair acts or  
 16 practices in the conduct of any trade or commerce.” §501.202(2), Fla. Stat.

17 210. Plaintiff Cosgrove and the Florida-Only Class are consumers as defined  
 18 by §501.203, Fla. Stat. The tuna products are goods within the meaning of FDUTPA.  
 19 Defendant is engaged in trade or commerce within the meaning of FDUTPA.

20 211. Florida Statute §501.204(1) declares unlawful “[u]nfair methods of  
 21 competition, unconscionable acts or practices, and unfair or deceptive acts or  
 22 practices in the conduct of any trade or commerce.” FDUTPA also prohibits false  
 23 and misleading advertising.

24 212. Florida Statute §501.204(2) states that “due consideration and great  
 25 weight shall be given to the interpretations of the Federal Trade Commission and the  
 26 federal courts relating to [section] 5(a)(1) of the Federal Trade Commission Act.”  
 27 Defendant’s unfair and deceptive practices are likely to mislead – and have misled –  
 28 consumers acting reasonably in the circumstances, and violate §500.04, Fla. Stat.,

1 and 21 U.S.C. §343.

2 213. Plaintiff Cosgrove and the Florida-Only Class have been substantially  
3 injured and aggrieved by Defendant's unfair and deceptive practices and acts of false  
4 advertising in that they paid for tuna products that were not dolphin-safe and/or  
5 sustainably caught as represented. The harm suffered by Plaintiff Cosgrove and  
6 Florida consumers was directly and proximately caused by the deceptive, misleading,  
7 and unfair practices of Defendant, as more fully described herein.

8 214. Pursuant to §§501.211(2) and 501.2105, Fla. Stat., Plaintiff Cosgrove  
9 and Florida consumers seek damages, injunctive relief, attorneys' fees and costs  
10 against Defendant.

11 **COUNT V**  
12 **Violations of the New York General Business Law § 349**  
13 **(On Behalf of the New York-Only Class)**

14 215. Plaintiffs Robert and Colleen McQuade, Plaintiffs Anthony and Lori  
15 Luciano, Plaintiffs Fidel and Jocelyn Jamelo, and Plaintiffs Borruso and Nugent (the  
16 "New York Plaintiffs") repeat and incorporate by reference the allegations contained  
17 in the paragraphs 1 through 112 above as if fully set forth herein.

18 216. The New York Plaintiffs bring this claim individually and on behalf of  
19 the New York-Only Class.

20 217. Defendant's actions alleged herein constitute unlawful, unfair, and  
21 deceptive business practices. Those actions include misrepresenting that the tuna  
22 products are "Dolphin Safe" when they are not.

23 218. Defendant's conduct constitutes acts, uses and/or employment by  
24 Defendant or its agents or employees of deception, fraud, unconscionable and unfair  
25 commercial practices, false pretenses, false promises, misrepresentations and/or the  
26 knowing concealment, suppression, or omission of material facts with the intent that  
27 others rely upon such concealment, suppression or omission, in connection with the

1 sale or advertisement of goods in violation of §349 of New York's General Business  
2 Law.

3 219. Defendant's deceptive conduct was generally directed at the consuming  
4 public.

5 220. Defendant's unfair and deceptive trade acts and practices in violation of  
6 §349 of New York's General Business Law have directly, foreseeably, and  
7 proximately caused damages and injury to the New York Plaintiffs and other  
8 members of the New York-Only Class.

9 221. Defendant's deceptive conduct has caused harm to New York-Only  
10 Class members in that they purchased the tuna products when they otherwise would  
11 not have absent Defendant's deceptive conduct.

12 222. Defendant's violations of §349 of New York's General Business Law  
13 threaten additional injury to the New York-Only Class members if the violations  
14 continue.

15 223. The New York Plaintiffs, on their own behalf and on behalf of the New  
16 York-Only Class, seek damages, injunctive relief, including an order enjoining  
17 Defendant's §349 violations alleged herein, and court costs and attorneys' fees,  
18 pursuant to NY Gen. Bus. Law §349.

19 **COUNT VI**  
20 **Violation of the New Jersey Consumer Fraud Act, N.J. Stat -- §§56:8-2.10**  
21 **(On Behalf of the New Jersey-Only Class)**

22 224. Plaintiffs Amar and Heena Mody and Plaintiffs Zelig and Petrovcik (the  
23 "New Jersey Plaintiffs") repeat and incorporate by reference the allegations  
24 contained in paragraphs 1 through 112 above as if fully set forth herein.

25 225. Defendant's tuna product packaging constitutes an "advertisement"  
26 within the meaning of §56-8-1(a) of the New Jersey Fraud Act, as it is an attempt by  
27 publication, dissemination, solicitation, indorsement, or circulation to induce  
28 consumers to acquire an interest in Defendant's merchandise.

226. Defendant's tuna products constitute "merchandise" within the meaning of §56-8-1(c), as they are directly or indirectly offered to the public for sale and fall within one of the statutory categories of objects, wares, goods, commodities, services, or "anything."

227. Defendant's tuna products are misrepresented within the meaning of §56:8-2.10, as the descriptions of said products are misleading, the descriptions omit information in ways that render the description false or misleading, and/or the descriptions represent the merchandise as having qualities they do not have.

228. Specifically, Defendant has violated, and continues to violate, the New Jersey Fraud Act by representing that its tuna products are "Dolphin Safe" when they are not.

229. The New Jersey Plaintiffs, on their own behalf, and on behalf of the New Jersey-Only Class members, suffered an ascertainable loss of money by their purchase of falsely advertised consumer products worth less than they paid, and seek damages, injunctive relief, including an order enjoining Defendant's violations of the New Jersey Consumer Fraud Act alleged herein, and court costs and attorneys' fees.

## COUNT VII

### **Violation of the Minnesota Prevention of Consumer Fraud Act (Unlawful Practices) – Minn. Stat. §325F.68, *et seq.* and Minn. Stat. §8.31, *et seq.* (On Behalf of the Minnesota-Only Class)**

230. Plaintiff Kiihne repeats and incorporates by reference the allegations contained in the paragraphs 1 through 112 above as if fully set forth herein.

231. Plaintiff Kiihne brings this claim individually and on behalf of the Minnesota-Only Class.

232. This cause of action is brought pursuant to the Minnesota Prevention of Consumer Fraud Act (Unlawful Practices), Minn. Stat. §325F.68, *et seq.* and Minn. Stat. §8.31, *et seq.* ("MCFA").

233. The tuna products Defendant sold are "merchandise" as defined in

1 Minn. Stat. §325F.68 and Defendant is a “person” as defined in Minn. Stat. §325F.68.

2 234. The MCFA prohibits “[t]he act, use, or employment by any person of  
3 any fraud, false pretense, false promise, misrepresentation, misleading statement or  
4 deceptive practice, with the intent that others rely thereon in connection with the sale  
5 of any merchandise, whether or not any person has in fact been misled, deceived, or  
6 damaged thereby . . . .” Minn. Stat. §325F.69(1).

7 235. Defendant engaged in unlawful practices, misrepresentations, and the  
8 concealment, suppression, and omission of material facts with respect to the sale and  
9 advertisement of merchandise in violation of the MCFA in at least the following  
10 ways:

11 (a) Deceptively representing to Plaintiff Kiihne and the Minnesota-Only  
12 Class that its tuna products were dolphin-safe, packaged from tuna caught using  
13 sustainable fishing methods, and traceable and verifiable;

14 (b) Falsely promising Defendant’s tuna products were dolphin-safe,  
15 packaged from tuna caught using sustainable fishing methods, and traceable and  
16 verifiable;

17 (c) Failing to warn or disclose to consumers, including Plaintiff Kiihne  
18 and the Minnesota-Only Class that its tuna products were not dolphin-safe, were  
19 not packaged from tuna caught using sustainable fishing methods, and were not  
20 traceable and verifiable;

21 (d) Failing to reveal a material fact – that its tuna products were not  
22 dolphin-safe, were not packaged from tuna caught using sustainable fishing  
23 methods, and were not traceable and verifiable; and

24 (e) Making a misrepresentation of material fact or statement of fact  
25 material to the transaction – *i.e.*, that its tuna products were not dolphin-safe, were  
26 not packaged from tuna caught using sustainable fishing methods, and were not  
27 traceable and verifiable – such that a person reasonably believed Defendant’s tuna  
28

1 products had such characteristics when they did not.

2 236. That Plaintiff Kiihne and the Minnesota-Only Class believed they were  
3 purchasing dolphin-safe tuna caught from sustainable fishing methods with the  
4 ability of Defendant to trace and verify its dolphin-safe quality when these  
5 representations were not true were material facts and would be material to a  
6 reasonable person.

7 237. As a direct and proximate result of Defendant's violation of the MCFA,  
8 Plaintiff Kiihne and the Minnesota-Only Class have suffered and continue to suffer  
9 ascertainable loss in the form of money in that they paid for tuna products that were  
10 not dolphin-safe and/or sustainably caught as represented, as more fully described  
11 herein.

12 238. Plaintiff Kiihne seeks relief under Minn. Stat. §8.31, including, but not  
13 limited to, damages and attorneys' fees.

14 **COUNT VIII –**  
15 **Violation of the Minnesota Prevention of Consumer Fraud Act (False**  
16 **Statement in Advertising) – Minn. Stat. §§325F.67, et seq.**  
**(On Behalf of the Minnesota-Only Class)**

17 239. Plaintiff Kiihne repeats and incorporates by reference the allegations  
18 contained in the paragraphs 1 through 112 above as if fully set forth herein.

19 240. Plaintiff Kiihne brings this claim individually and on behalf of the  
20 Minnesota-Only Class.

21 241. The tuna products Defendant sold are “merchandise” as defined in  
22 Minn. Stat. §325F.68 and Defendant is a “person” as defined in Minn. Stat. §325F.68.

23 242. Defendant made materially misleading and deceptive statements to  
24 consumers about its tuna products as being dolphin-safe and/or sustainably caught.

25 243. This advertising was and continues to be deceptive and misleading  
26 because Defendant's tuna products are neither dolphin-safe nor sustainably caught.

27 244. Defendant had superior knowledge and bargaining power in its



1 transactions with consumers and misrepresented its tuna products as being dolphin-  
 2 safe and/or sustainably caught to induce consumers to purchase Defendant's tuna  
 3 products. These facts are material because reasonable consumers, like Plaintiff  
 4 Kiihne would have paid less or, more likely, not purchased the tuna products at all if  
 5 they had known the products were not dolphin-safe and/or sustainably caught.

6 245. Plaintiff Kiihne and the Minnesota-Only Class seek an order requiring  
 7 Defendant to disgorge all ill-gotten gains and provide full restitution of all monies it  
 8 wrongfully obtained from Plaintiff Kiihne and the Minnesota-Only Class through its  
 9 false and deceptive advertising of its tuna products.

10 246. Plaintiff Kiihne and the Minnesota-Only Class also seek an award of  
 11 damages and attorneys' fees for violations of Minn. Stat. §325F.67 pursuant to Minn.  
 12 Stat. §8.31, subd. 3a.

13 **COUNT IX –**  
 14 **Violation of the Minnesota Uniform Deceptive Trade Practices Act – Minn.**  
 15 **Stat. §§325D.43, *et seq.***  
 16 **(On Behalf of the Minnesota-Only Class)**

17 247. Plaintiff Kiihne repeats and incorporates by reference the allegations  
 18 contained in the paragraphs 1 through 112 above as if fully set forth herein.

19 248. Plaintiff Kiihne brings this claim individually and on behalf of the  
 20 Minnesota-Only Class.

21 249. This claim is brought under the Minnesota Uniform Deceptive Trade  
 22 Practices Act, Minn. Stat. §§325D.43, *et seq.* (the “MDTPA”)

23 250. Defendant is a “person” as defined in the MDTPA.

24 251. Under the MDTPA, a person engages in a deceptive trade practice when  
 25 in the course of business, vocation, or occupation, the person:

26 (a) “[R]epresents that goods or services have sponsorship, approval,  
 27 characteristics, ingredients, uses, benefits, or quantities that they do not have or  
 28 that a person has a sponsorship, approval, status, affiliation, or connection that the

1 person does not have”;

2 (b) “[R]epresents that goods or services are of a particular standard,  
3 quality, or grade, or that goods are of a particular style or model, if they are of  
4 another”; and

5 (c) “[A]dvertises goods or services with intent not to sell them as  
6 advertised.” (Minn. Stat. §325D.44 (5)(7)(9)).

7 252. Defendant violated these provisions of the MDTPA by:

8 (a) Deceptively representing to Plaintiff Kiihne and the Minnesota-Only  
9 Class that the tuna products were dolphin-safe and/or sustainably caught;

10 (b) Falsely advertising the tuna products as dolphin-safe and/or  
11 sustainably caught;

12 (c) Failing to warn or disclose to consumers, including Plaintiff Kiihne  
13 and the Minnesota-Only Class, that the tuna products were not dolphin-safe nor  
14 sustainably caught contrary to Defendant’s representations;

15 (d) Failing to reveal a material fact – that Defendant’s tuna products were  
16 neither dolphin-safe nor sustainably caught as represented – the omission of which  
17 tends to mislead or deceive consumers, and which fact could not reasonably be  
18 known by consumers; and

19 (e) Making a representation of fact or statement of fact material to the  
20 transaction – *i.e.*, that Defendant’s tuna products were dolphin-safe and/or  
21 sustainably caught – such that a person reasonably believed they were when they  
22 were not.

23 253. Plaintiff Kiihne and the Minnesota-Only Class believed they were  
24 purchasing dolphin-safe and sustainably caught tuna products when they were not.  
25 These were material facts and would be material to a reasonable person.

26 254. The above unlawful and deceptive acts and practices by Defendant were  
27 immoral, unethical, oppressive, and unscrupulous. These acts caused substantial  
28

1 injury to consumers that the consumers could not reasonably avoid; this substantial  
2 injury outweighed any benefits to consumers or to competition.

3 255. As a direct and proximate result of Defendant's violation of the  
4 MDTPA, Plaintiff Kiihne and the Minnesota-Only Class have suffered and continue  
5 to suffer ascertainable loss in the form of money.

6 256. Pursuant to Minn. Stat. §325D.45, Plaintiff Kiihne seeks individually  
7 and on behalf of all others similarly situated, all available remedies under law,  
8 including, but not limited to, actual damages, costs, and attorneys' fees.

9  
10 **COUNT X**  
**Unjust Enrichment/Quasi-Contract**

11 257. Plaintiffs repeat and incorporate by reference the allegations contained  
12 in the paragraphs 1 through 112 above as if fully set forth herein.

13 258. Plaintiffs and Class members conferred a benefit on Defendant by  
14 purchasing the tuna products.

15 259. Defendant appreciated and/or realized the benefits in the amount of the  
16 purchase price it earned from sales of the tuna products to Plaintiff and Class  
17 members or, at a minimum, the difference between the price it was able to charge  
18 Plaintiffs and Class members for the tuna products with the dolphin-safe  
19 representations and sustainable fishing method representations and the price it would  
20 have been able to charge absent the same.

21 260. Defendant has profited from its unlawful, unfair, false, misleading, and  
22 deceptive practices and advertising at the expense of Plaintiffs and Class members,  
23 under circumstances in which it would be unjust for Defendant to be permitted to  
24 retain the benefit.

25 261. Plaintiffs do not have an adequate remedy at law against Defendant.

26 262. Plaintiffs and Class members are entitled to restitution of all monies paid  
27

1 for the tuna products or, at a minimum, the premium paid for the tuna products.

2 **PRAYER FOR RELIEF**

3 Wherefore, Plaintiffs pray for a judgment:

4 A. Certifying the Classes as requested herein;

5 B. Issuing an order declaring that Defendant has engaged in unlawful,  
6 unfair, and deceptive acts and practices in violation of the consumer fraud laws in the  
7 certified states and engaged in an unlawful pattern of racketeering activity in  
8 violation of the Racketeer Influenced and Corrupt Organization Act;

9 C. Enjoining Defendant's conduct and ordering Defendant to engage in a  
10 corrective advertising campaign;

11 D. Awarding the Classes damages, including statutory, treble, and punitive  
12 damages, and interest thereon;

13 E. Awarding disgorgement and restitution of Defendant's ill-gotten  
14 revenues to Plaintiffs and the Classes;

15 F. Awarding attorneys' fees and costs; and

16 G. Providing such further relief as may be just and proper.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiffs hereby demand a trial of their claims by jury to the extent authorized  
19 by law.

20  
21 Dated: June 17, 2019 BONNETT, FAIRBOURN, FRIEDMAN  
22 & BALINT, P.C.

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Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**

I hereby certify that on June 17, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail notice list, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the Manual Notice list.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed the 17th day of June 2019.

/s/ Patricia N. Syverson  
Patricia N. Syverson